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ABSTRACT

This document presents a report on the guardianship of the elderly and the disabled, and on abuses that occur in such guardianship. It presents a set of 12 questions and answers about guardianship: (1) what is guardianship; (2) how many older Americans are under guardianship; (3) who are the elderly persons under guardianship; (4) who can be a guardian; (5) do courts require that guardians receive special training; (6) what is the legal process by which a person can be put under guardianship; (7) what checks are in place to protect an elderly person from abuse by a guardian; (8) what are some of the most frequently cited problems with the current American guardianship system; (9) how can an elderly person get out from under guardianship; (10) what are some examples of guardianship abuse; (11) are there federal laws or national uniform standards for protecting the elderly under guardianship; and (12) what reforms are needed. Tables are included which illustrate which states have restrictions on who can be a guardian, the legal representation of an alleged incompetent by state, which states give the alleged incompetent the right to a jury trial, which states require the alleged incompetent to attend competency hearings, which states require medical evidence to find incompetence, and which states allow "advanced age" as cause for determining incompetence. The Associated Press series on guardianship and other relevant articles are appended. (NB)

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[COMMITTEE PRINT]

ABUSES IN GUARDIANSHIP OF THE ELDERLY AND INFIRM: A NATIONAL DISGRACE

A REPORT

BY

THE CHAIRMAN

OF THE

SUBCOMMITTEE ON HEALTH AND LONG-TERM CARE

OF THE

SELECT COMMITTEE ON AGING
HOUSE OF REPRESENTATIVES
ONE HUNDREDTH CONGRESS

FIRST SESSION

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QUESTIONS AND ANSWERS ABOUT GUARDIANSHIP

What Is Guardianship?

Guardianship is a relationship whereby the legal rights, possessions and decision-making power of one person (the ward) are transferred to another (the guardian) once a determination has been made that the ward is unable to handle his or her own affairs.

While guardianship was designed to protect the elderly, it is a process that is often used to take advantage of them. Guardianship in many ways is the most severe form of civil deprivation which can be imposed on a citizen of the United States. An individual under guardianship typically is stripped of his or her basic personal rights such as the right to vote, the right to marry, the right to handle money, and so forth.

How Many Older Americans Are Under Guardianship?

Today, there are more than 500,000 older Americans under guardianship. A complete accounting of court records could bring this figure much higher.

Who Are These Elderly?

Most elderly placed under guardianship are very old, widowed, and live in a nursing home, boarding home or apartment. Their average age is 80. The majority of wards are women who have outlived their spouse. And more than half are in nursing homes.

While many of these older Americans genuinely need assistance in managing their own affairs, many can do some things for themselves. Others were either never or are only temporarily unable to completely manage their own affairs.

For example:

> Miss M., an 81-year-old woman from Kansas, suffered a stroke. When she returned home, she learned that while she was in the hospital the court had appointed a guardian to manage her affairs. Miss M., one day after mowing her lawn, was forcibly taken to a nursing home under orders of her guardian. This healthy and active woman spent 5 weeks in the nursing home unnecessarily at her expense and against her will before she was able to have the guardianship removed.

Who Can Be a Guardian?

Virtually any mentally competent person can legally become the guardian of a person determined incompetent. This person is often the one who initiates the effort to have an elderly person declared incompetent. Despite the fact that a guardian typically has com-

plete legal control over his or her ward's finances and personal well-being, there are typically no requirements that guardians have any special knowledge of accounting, social work, or law or that they meet any minimum qualifications of education, experience or intelligence. In fact, only 18 States place any restrictions whatsoever on who can become a guardian, and *in only 5 States are convicted felons prohibited from being appointed guardians!*

For example:

> A 23-year-old Michigan barroom janitor, with no training or experience in accounting, social work or law, was given the job of public guardian. Within one year, he was responsible for 80 people's lives and their $350,000 in income and assets. He was later convicted of embezzling $130,000 from his wards.

Another alarming trend in guardianship of the elderly is that, while 70 percent of guardians are family members of their wards, there is a growing number of for-profit companies specializing in guardianship. These businesses often handle large numbers of wards and have little or no personal interest in the well-being of their wards. They profit off mostly helpless people.

Do Courts Require That Guardians Receive Special Training Once Appointed To Control Another Person's Life?

Rarely, if ever, is any kind of training provided or required under the law. In fact, fewer than 20 percent of courts ever provide guardians instructions as to their duties and legal responsibilities over their wards.

What Is the Legal Process by Which a Person Can Be Put Under Guardianship?

While the legal process by which a person is put under guardianship varies from State to State and from locality to locality, indeed from court to court, the common thread that runs throughout is that "accused" incompetents have the deck stacked against them. An analysis of over 2,000 guardianship cases by the Associated Press found that fully *97 percent* of petitions for guardianship were approved.

The guardianship process generally begins with the prospective guardian filing a petition in a county probate court. A judge usually hears the case (although in some counties the court clerk or other court official presides) and makes a ruling as to whether the "accused" is unable to manage his or her own affairs. As noted above, very rarely is there a review of the credentials of the individual attempting to be named guardian, or of that person's appropriateness to serve in that capacity.

The "accused" incompetent elderly person has few if any rights once place under guardianship. In fact, he or she often has fewer rights and protections than an accused murderer in the process of adjudication. When one considers the following facts from the Subcommittee's review of pertinent State laws and literature, it is not difficult to imagine how 97 percent of guardianship petitions are granted:

—Only 14 States require that allegedly incompetent elderly people be informed as to their legal rights (right to counsel, right to present evidence), or what rights they stand to lose if placed under guardianship, before a judgment is made of their competence.
—8 States have no requirement that the "accused" be notified that someone is petitioning to have them placed under guardianship and many others allow waiving of such a requirement. This is clearly a violation of basic due process under the law.
—15 States do not specify that the elderly person has a right to counsel at the guardianship hearing.
—Only 16 States require that the elderly person be present at his or her own guardianship hearing. A recent study revealed that in 84 percent of cases, neither the "accused" elderly nor a legal representative was present at the guardianship hearing.
—33 States allow "advanced age" as a cause for determining an elderly person's competence and whether or not he or she should be placed under guardianship.
—Only 12 States require that medical evidence be submitted in order to find a person incompetent and therefore able to be placed under guardianship.

The Subcommittee independently confirmed the ease with which a person can be placed under guardianship. It was found that in many instances, with a minimum of effort, time, and money, a guardianship could be obtained. Simple forms regarding the alleged incompetent's general condition were required to be filed. In no case was the alleged incompetent required to be present at the hearing. In no case was the alleged incompetent required to be represented by legal counsel. The Subcommittee was told that hearings on this important legal matter could be as short as 5 minutes.

What Checks Are in Place To Protect an Elderly Person From Abuse by His or Her Guardian?

There are few. Only half the States require that guardians file an annual report of their wards' well-being. Six States do not require any financial accounting of wards' monies. Even in the States that do require financial reporting, there is often little or no auditing of these reports. In Virginia, for example, the Subcommittee was told by an individual who works in the system, "The only thing that matters is what's on the bottom line of the statement. As long as income and outgo match up, no questions are asked. It doesn't matter whatsoever what the elderly person's money has been spent on or how much. That's why there are so many problems."

An investigation by the Associated Press found that nearly half of the files on guardians were missing at least one annual accounting of money. Only 16 percent of the files reviewed contained reports on the elderly ward's well-being.

What Are Some of the Other Most Frequently Cited Problems With the Current American Guardianship System?

1. There is a marked lack of due process in most States in the procedure by which a guardian is appointed. A person does not have to display evidence of training to be a guardian. There is no minimum requirement of education, experience or intelligence in any of the 50 States, the District of Columbia or the territories.

2. The courts that handle guardianship (usually probate courts) are terribly overburdened, so that even in cases where guardianship is proper and appropriate, there are no followup checks to monitor the progress of the guardianship arrangements. Although laws in 44 States require guardians to file regular accountings of a ward's money, these files were missing or incomplete in 48 percent of guardianship files examined in a recent Associated Press survey. According to AP, 13% of cases had the opening of guardianship as the last entry in the file. In 34% of cases, the closing of the guardianship was the last entry in the file.

3. There is a powerful and unique abrogation of rights when a person's care is entrusted to another under a guardianship arrangement. Typically wards have fewer rights than the typical prisoner—they can no longer receive money or pay their bills. They cannot marry or divorce. By appointing a guardian, the court entrusts to someone else the power to choose where the wards will live, what medical treatment they will receive and, in rare cases, when they die.

How Can an Elderly Person Get Out From Under Guardianship?

Procedures for terminating a guardianship vary across the nation. However, in nearly all areas, it is a very difficult and time-consuming proposition. Thus, for an individual who has been wrongfully found incompetent and wishes to "appeal" the finding, or an individual who was only temporarily unable to manage his or her affairs, to have control over their own lives restored is often difficult if not impossible.

Because the elderly person under the law is frequently prejudged "incompetent" and has few legal rights, getting access to the legal system is often difficult. Many are not able to secure the services of an attorney. Many have been placed in nursing homes and have little ability to appear before the court.

For example:

> Ms. V. of Florida, a 66-year-old professional, was on her way to work when she got into a serious car accident which left her comatose for two months. She recovered completely and only found out when she went to vote that she had been determined incompetent and therefore could not vote. While she was comatose, her daughter had her declared incompetent. Without any money, Mrs. V. had to go to the library and research on her own what she would have to do to get out from under this. After 7 trying months of research, writing and regular visits to the court, the guardianship was removed. However, Ms. V. is outraged that in

official legal records she still is listed two ways: as Ms. V. and Ms. V., *Incompetent.*

WHAT ARE SOME OTHER EXAMPLES OF GUARDIANSHIP ABUSE?

Abuses in guardianship take all shapes and forms, and claim as their victims people in all walks of life, from Broadway producers to chicken farmers. Abusers can be daughters, sons, friends, attorneys, or for-profit guardianship companies among others.

—A Grand Rapids, Michigan woman admitted taking $45,000 from the estates of mentally incompetent persons and spending the money for a car, clothes and vacations.

—A Denver mother defied a judge and sold a house that belonged to her child. The proceeds have never been accounted for.

—A typical ward of the court is John A. Sward, a World War II veteran in Los Angeles who suffers from service-connected mental and emotional problems. He receives $1,295 in monthly benefits from the Veterans Administration.
Several years ago, Sward was befriended by the operator of the motel where he was staying. The motel operator, David Gold, became Sward's conservator. But in 1981, probate investigator, Edith Reid, filed a report in court that Gold had spent $10,767 of Sward's money on a car, even though Mr. Sward had no driver's license and got around town by bus. The woman who managed Gold's motel "drives the vehicle to her dance classes," the investigator reported. The Veterans Administration asked Gold to resign as conservator after he failed to file an accounting.

—The relative ease with which an estate can be put into conservatorship is shocking in many instances. In another hotly disputed case, the $140 million estate of Los Angeles real estate developer, Ben Weingart, was put into conservatorship without his presence in court. Mr. Weingart died in 1980 at the age of 92, but his friend and live-in companion, Laura Winston, has doggedly pursued legal efforts to show that the conservatorship was conceived in fraud. In 1974, three of Weingart's business associates petitioned the court to become conservators of his estate on the grounds that his health was failing and Winston had designs on his money. But according to her, "Ben was in good condition when this happened. He went to work every day." Nevertheless, a doctor's report said, in effect, that Weingart's well-being would be impaired if he attended hearings on the petition. The three associates, who were financially indebted to Weingart, were appointed permanent conservators.

—Revia Karl, a frail, 84-year-old woman, is living her last years in a psychotic haze in an Inglewood, California hospital. "She has no knowledge of what is going on," says a hospital spokesman. Mrs. Karl doesn't know that her grandson, Jerry M. Karl, ran through most of her $75,000 in assets after a court appointed him her conservator. Mr. Karl wasn't charged with any wrongdoing, although he was replaced as conservator last year. "I screwed up my grandma's estate," concedes Mr. Karl,

36, a former mathematics teacher. "I've lived on her money for the last two years."

—In Washington, D.C., an attorney acting as conservator took $376,000 from an elderly man's estate. He later pleaded guilty to fraud.

—A Colorado woman, conservator for her ailing husband, spent $80,000 of his funds on her son's business.

—Sometimes conservators simply lack the know-how to oversee an estate. Nearly all of Regina Aberson's $250,000 was wasted in the failure of her daughter, Eugenia Hershenson, "to use ordinary care and diligence" as conservator, according to an attorney's report to the Los Angeles Superior Court. The attorney, who represents the estate's new conservator, says Mrs. Hershenson with court approval had turned over her mother's money to a stockbroker to put into low-risk investments. Instead the broker used the money to trade options. Hershenson has been replaced as guardian.

—In Chicago, relatives of one elderly woman sought a ruling declaring her incompetent. "She wasn't, but she had a schlock lawyer who never put her on the stand," says Patrick Murphy, Cook County public guardian. A judge granted the request, then ordered the woman to pay both sides' legal fees. Murphy observed, "It cost her $18,000 to have her constitutional rights taken away."

—Mrs. H., an elderly woman from California, had her estate depleted and her house sold by her son-in-law who had been named her guardian. When her son-in-law was named guardian, Mrs. H. had an estate worth $167,000. By the time he was removed 8 years later, all that remained was $3,000. The son-in-law used Mrs. H.'s money to purchase a new house for himself.

—A Florida lawyer cites the case of a daughter who wanted control of her elderly parents' finances. A judge ordered a psychiatrist to investigate, but the father, caught off guard, refused to admit the doctor to his home. The expert declared the man a "paranoiac," and the judge ruled for the woman.

—In some cases, judges have used guardianship appointments to supply old political cronies with easy money. In Hartford, Connecticut, a banker and a court-appointed conservator in one year charged $500,000 in fees for handling the $32 million estate of an ailing octogenarian. When the *Hartford Courant* disclosed the arrangement, the uproar was so fierce that Probate Judge James Kinsella, a friend who had named the conservator, retired early following a vote by a committee of the State Legislature to impeach him.

—In Arizona, authorities filed suit seeking to force a daughter to move her mother from a state mental hospital to a private rest home. Officials charged that the woman would rather keep the mother in a free public hospital than deplete her inheritance.

Are There Any Federal Laws or National Uniform Standards for Protecting Those Elderly Under Guardianship?

No. Although our nation just celebrated the 200th anniversary of the Constitution with justifiable pride, over 500,000 elderly Americans under guardianship could not take part in the parade. There are no Federal laws designed to afford basic protections in the guardianship process. The United States can take no honor in being one of the only industrialized nations on earth that lacks such a system. Even the Soviet Union has a national code for the protection of the elderly.

What Reforms Are Needed?

There must be national uniform standards enacted to protect elderly and others under guardianship from abuse. At a minimum, such standards include:

—A uniform test of competency must be completed by a psychiatrist, a social worker and a general medical doctor before guardianship can be granted.
—The proposed ward must be given sufficient notice prior to the competency hearing and must be present (unless a doctor declares him or her unable) and represented by legal counsel.
—The elderly person must receive a clear and concise explanation of his or her rights under guardianship.
—There must be minimum standards of character and training for those who serve as guardians. This should include instructions from the court as to their duties as guardians.
—Guardianships should be as limited in length and scope as is feasible. Wards should have regular rights to appeal guardianship decisions and access to court system for such purposes.
—Financial and personal status reports should be submitted to the court for each ward at least once a year. Courts should maintain sufficient staff to substantiate these reports.

These reforms may require additional funding. But the richest nation in the world, which values liberty highly, can certainly afford to protect the basic civil rights of its most vulnerable citizens.

1. *Are there any restrictions on who can be a guardian?*

	Yes
Alabama	X
Alaska	
Arizona	
Arkansas	[1] X
California	X
Colorado	
Connecticut	
Delaware	
District of Columbia	
Florida	[1] X
Georgia	
Hawaii	
Idaho	
Illinois	[1] X
Indiana	
Iowa	

Kansas	
Kentucky	
Louisiana	
Maine	X
Maryland	
Massachusetts	X
Michigan	X
Minnesota	
Mississippi	
Missouri	X
Montana	
Nebraska	X
Nevada	[1] X
New Hampshire	X
New Jersey	
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	X
Oklahoma	
Oregon	[1] X
Pennsylvania	
Rhode Island	
South Carolina	X
South Dakota	
Tennessee	X
Texas	X
Utah	
Vermont	X
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	
Total	18

[1] Convicted felons are prohibited.

II. *Legal representation of alleged incompetent*

	A. Has right to counsel	B. Court appoints if unrepresented
	Yes	Yes
Alabama		X
Alaska	X	X
Arizona		X
Arkansas		
California	X	X
Colorado	X	X
Connecticut	X	X
Delaware	X	
District of Columbia	X	
Florida	X	X
Georgia	X	X
Hawaii		
Idaho	X	X
Illinois	X	X
Indiana		X
Iowa		
Kansas	X	X
Kentucky	X	X
Louisiana		X

II. *Legal representation of alleged incompetent—Continued*

	A. Has right to counsel	B. Court appoints if unrepresented
	Yes	Yes
Maine	X	X
Maryland		X
Massachusetts		
Michigan	X	X
Minnesota	X	X
Mississippi		
Missouri	X	X
Montana	X	X
Nebraska	X	X
Nevada	X	X
New Hampshire	X	X
New Jersey	X	X
New Mexico	X	X
New York	X	
North Carolina	X	X
North Dakota	X	X
Ohio	X	
Oklahoma		
Oregon	X	X
Pennsylvania	X	X
Rhode Island		
South Carolina		
South Dakota		
Tennessee	X	X
Texas	X	
Utah	X	X
Vermont	X	X
Virginia		
Washington	X	X
West Virginia		X
Wisconsin	X	X
Wyoming	X	X
Total	35	36

III. *Does alleged incompetent have right to a jury trial?*

	Yes
Alabama	X
Alaska	X
Arizona	X
Arkansas	
California	X
Colorado	X
Connecticut	
Delaware	
District of Columbia	
Florida	
Georgia	
Hawaii	
Idaho	
Illinois	X
Indiana	X
Iowa	X
Kansas	X
Kentucky	X
Louisiana	

Maine	
Maryland	X
Massachusetts	
Michigan	X
Minnesota	
Mississippi	
Missouri	X
Montana	X
Nebraska	
Nevada	
New Hampshire	
New Jersey	X
New Mexico	X
New York	X
North Carolina	X
North Dakota	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	X
Rhode Island	
South Carolina	
South Dakota	
Tennessee	X
Texas	X
Utah	X
Vermont	
Virginia	X
Washington	X
West Virginia	
Wisconsin	X
Wyoming	X
Total	26

IV. *Is alleged incompetent required to attend competency hearing?*

	Yes
Alabama	X
Alaska	
Arizona	
Arkansas	X
California	X
Colorado	
Connecticut	
Delaware	
District of Columbia	X
Florida	X
Georgia	X
Hawaii	
Idaho	
Illinois	X
Indiana	
Iowa	
Kansas	X
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	
Michigan	
Minnesota	X
Mississippi	X
Missouri	
Montana	
Nebraska	
Nevada	X
New Hampshire	

New Jersey	X
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	
Oklahoma	X
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	X
Tennessee	
Texas	X
Utah	
Vermont	
Virginia	
Washington	X
West Virginia	
Wisconsin	X
Wyoming	
Total	16

V. *Is medical evidence required to find incompetence?*

	Yes
Alabama	
Alaska	
Arizona	
Arkansas	X
California	X
Colorado	
Connecticut	X
Delaware	
District of Columbia	
Florida	X
Georgia	X
Hawaii	
Idaho	
Illinois	X
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	X
Massachusetts	X
Michigan	X
Minnesota	
Mississippi	X
Missouri	
Montana	
Nebraska	
Nevada	
New Hampshire	
New Jersey	X
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	

South Dakota	
Tennessee	
Texas	
Utah	
Vermont	
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	X
Total	12

VI. *States which allow "advanced age" as cause for determining incompetence*

Alabama	
Alaska	
Arizona	X
Arkansas	X
California	
Colorado	X
Connecticut	X
Delaware	X
District of Columbia	X
Florida	X
Georgia	X
Hawaii	X
Idaho	X
Illinois	X
Indiana	X
Iowa	
Kansas	X
Kentucky	X
Louisiana	
Maine	
Maryland	X
Massachusetts	X
Michigan	
Minnesota	
Mississippi	X
Missouri	X
Montana	X
Nebraska	X
Nevada	X
New Hampshire	
New Jersey	
New Mexico	X
New York	X
North Carolina	X
North Dakota	X
Ohio	X
Oklahoma	X
Oregon	
Pennsylvania	X
Rhode Island	
South Carolina	
South Dakota	
Tennessee	X
Texas	
Utah	X
Vermont	
Virginia	
Washington	X
West Virginia	
Wisconsin	X
Wyoming	X
Total	33

APPENDIX I

ASSOCIATED PRESS SERIES ON GUARDIANSHIP

PART I: DECLARED "LEGALLY DEAD" BY A TROUBLED SYSTEM

EDITOR'S NOTE.—America is aging, and its elderly are often victimized by the guardianship system that is supposed to protect them. For a year, the Associated Press examined the guardianship process of the elderly nationwide. This is the first part of a six-day series detailing what the AP found.

(By Fred Bayles and Scott McCartney, Associated Press writers)

The nation's guardianship system, a crucial last line of protection for the ailing elderly, is failing many of those it is designed to protect.

A year-long investigation by the Associated Press of courts in all 50 states and the District of Columbia found a dangerously burdended and troubled system that regularly puts elderly lives in the hands of others with little or no evidence of necessity, then fails to guard against abuse, theft and neglect.

In thousands of courts around the nation every week, a few minutes of routine and the stroke of a judge's pen are all that it takes to strip an old man or woman of basic rights.

The 300,000 to 400,000 elderly people under guardianship can no longer receive money or pay their bills. They cannot marry or divorce. The court entrusts to someone else the power to choose where they will live, what medical treatment they will get, and, in rare cases, when they will die.

The AP investigation examined more than 2,200 randomly selected guardianship court files to get a portrait of wards and of the system that oversees them.

After giving guardians such great power over elderly people, overworked and understaffed court systems frequently break down, abandoning those incapable of caring for themselves, the AP found.

A legal tool meant to protect the elderly and their property, guardianship sometimes results instead in financial or physical mistreatment, the AP found.

"Guardianship is a process that uproots people, literally 'unpersons' them, declares them legally dead," said Dr. Dennis Koson, a law and psychiatry expert in Florida. "Done badly, it does more hurting then protecting."

That danger was confirmed by the AP investigation, which involved staff reports in every state. The AP found:

Elderly in guardianship court are often afforded fewer rights than criminal defendants. In 44 percent of the cases, the proposed ward was not represented by an attorney. Three out of 10 files contained no medical evidence. Forty-nine percent of the wards were not present at their hearings. Twenty-five percent of the files contained no indication hearings had been held.

Some elderly people discover they are wards of the court only after the fact.

A Bennington, Vt., woman learned she was under guardianship only when told by her nursing home she could no longer spend money without the permission of the guardian, her daughter. A Fort Lauderdale, Fla., woman found she had a guardian only when she was turned away from the polling booth.

"Guardianship became a rubber-stamp procedure over the years," said Indianapolis Probate Judge Victor Pfau, a leader in a judicial reform movement.

While laws in 44 states require guardians to file regular accountings of the ward's money, they were missing or incomplete in 48 percent of the files examined. Thirteen percent, more than one in 10, of the files were empty but for the initial granting of guardianship powers.

Such files are critical to the court's knowledge that wards are being cared for and that their money is being spent properly. Without the files, the door is open to abuse.

So a court in Missoula, Mont., had no record of what happened to the $131,000 estate of a 92-year-old man found ill and alone in a cabin in 1985 after a couple described as "friends" became his guardians. And a Pittsburgh court learned of a decade-long misappropriation of $25,000 in Social Security checks only when a state hospital complained of non-payment for a ward's care. The ward's guardian an attorney, was disbarred in 1985.

What reports are filed are rarely audited or even checked by probate courts, which handle guardianships in most jurisdictions. One of the last rungs on the courthouse ladder, often dealing more with affairs of the dead than of the living, probate courts are swamped. Many can't even guess how many guardianships they have on file.

"I don't know where the wards are, who's caring for them, what they're doing," said Probate Judge Anthony Sciarretta of Providence, RI. "I have no support staff, I have no welfare workers, I have no aides, I have no assistants and I have no money."

In San Diego, judges routinely signed off on annual accountings filed by lawyer Robert Kronemyer for the estate of his ward, Joshua Baily. Not until after Baily's death did a friend become suspicious. Kronemyer was convicted in 1983 of theft and perjury for taking hundreds of thousands of dollars in cash and bonds.

Most guardians are dedicated, caring people who see that their wards get proper food, clothing, shelter and medical attention. A good guardian can protect against greedy relatives and scheming con men.

Yet if the nation's elderly population jumps 22 percent by century's end, to nearly 35 million, as projected, the problems of guardianship are likely to grow.

While guardianship procedures vary, even from county to county, the laws follow a pattern: A petition is filed, usually by a family member, alleging a person is incompetent and no longer able to care for himself or herself. The person is evaluated, and the court rules on the petition.

If granted, guardianship reduces these "wards of the court" to the status of legal infants who may no longer drive a car, vote or, in many states, hire an attorney. "A prisoner has more legal rights," said Winsor Schmidt, a Memphis State University professor who has studied guardianship in 13 states.

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Once shuffled into guardianship, the elderly have few ways out. Some states bar wards from hiring attorneys because they have been ruled incompetent. Twenty-four states require courts to regularly check the status of the wards. Some judges are reluctant to reopen cases to remove guardianships.

In Grand Junction, Colo., Vivian Steiner, 68, has written to the judge who placed her under guardianship, contending she has recovered from medical difficulties and can leave the nursing home where she is confined. Pitkin County District Judge J.E. DeVilbiss hasn't answered her, standing by his 1984 ruling that she is incompetent.

"The guardianship is done and it's done unless someone calls it to the court's attention," DeVilbiss said.

The AP found institutions are increasingly using guardianship as an answer to a variety of problems. Hospitals, faced with new Medicare regulations limiting coverage for extended care, use guardianship to move patients to nursing homes. Nursing homes require guardianship to ensure someone will pay the bills.

But critics challenge using such a harsh remedy to guarantee payments.

"You don't need someone to strip you to the rights of a 5-year-old to check you into a nursing home," said David Grant, director of the Guardianship Diversion Project, a Los Angeles group promoting less restrictive alternatives for the elderly.

Baltimore courts now use an expedited procedure that allows hospitals to file petitions of guardianship on elderly patients, then move them to nursing homes before the petitions are approved.

While the hospitals and the courts say this is simply an efficient way of handling patients, Jerry Dresner, an attorney with the Maryland Disability Law Center, calls it "after-the-fact due process."

Nursing homes, hospitals and doctors are also using guardianship as a hedge against liability in tough decisions such as amputations and disconnecting life support systems.

"If I ran a nursing home, I'd insist on it," said Pat Graves, a social worker who runs a senior citizens program at an Albuquerque, N.M., hospital.

Federally mandated adult protective services programs in each state have created a cadre of social workers vigorously checking reports of abuse, "self-neglect" and irrational behavior among the elderly. But their eagerness sometimes leads them to file guardianship petitions on old people who simply may be having trouble keeping house or keeping track of bills.

"The whole problem with guardianship as it is practiced today is that they take someone who's got a bit of a problem and put them away," said Theresa Bertram, director of the Cathedral Foundation, a Jacksonville, Fla., charity offering support services to try to keep the elderly out of guardianship.

As America ages, the system faces change. Medical advances have led to longer lives—and more cases of incompetence. As social services are pushed to the breaking point, many turn to guardianship. The AP has even found petitions for guardianship in AIDS cases filtering into probate court.

To be sure, most guardians are honest and well-intentioned. Many judges defend the present system as humane and effective, arguing that guardianship is a family business and not in need of outside supervision.

But guardians are not always family members. The AP found one-quarter of today's guardians are friends, attorneys, professional guardians or government agencies with no familial relationship to their wards.

A new industry has cropped up of professional guardians, who bill their wards' estates as much as $65 an hour for their services. The AP has found such entrepreneurs with responsibility for 100, 300, and in one case 400 wards.

"I could start a business, put people on computer, and business would be booming," said Seattle lawyer Kathleen Moore, who works part-time as guardian for seven elderly wards.

Those who can't pay are herded into a growing number of state or county public guardianship offices, with caseloads reaching several hundred per social worker.

Guardianship's problems have led to some reform attempts in recent years.

California has overhauled its statutes on guardianship, which for adults is called conservatorship. In 1981, the state began funding probate court investigators who now regularly examine guardianship petitions and check up on guardians. State funds also pay probate attorneys to review accountings and other filings.

"The Legislature was of the opinion that maybe a lot of people under conservatorship didn't need to be," said Timothy A. Whitehouse, assistant supervising probate attorney in Los Angeles.

Last year, a meeting of probate judges sponsored by the American Bar Association and the National Judicial College drafted a list of reforms, including recommendations that would require due process rights for the proposed ward and closer monitoring of guardianships by the courts.

Others look to alternatives. Federal funds support the Guardianship Diversion Projects, which promotes programs to pay bills and manage money for the elderly without going to the extreme of guardianship.

"Guardianship is an important, useful service that is inappropriate to almost everybody," said Grant. "There's going to be a difficult period in which people learn that guardianship just doesn't work."

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For whatever reason the guardianship petition is brought, it moves speedly through overtaxed courts that often sidestep the civil rights safeguards so zealously protected in other types of courtrooms.

When held, guardianship hearings sometimes last only minutes. Medical investigators and court-appointed examiners often perform perfunctory checks of proposed wards to see if guardianship is needed.

Richard Shamel, a Deerfield Beach, Fla., attorney who specializes in guardianship, said it takes him 10 to 15 minutes to determines if someone needs a guardian. "About half of those you see, they're just staring at the ceiling," he said.

Competency examinations, when they are done, are performed by people with varying degrees of expertise, including urologists, osteopaths, social workers, nursing home employees and retired court clerks. Their decisions may be based on such tests as the proposed ward's ability to recall the names of the last three presidents or perform simple math problems.

The criteria used by these investigators are often sketchy. People can be placed under guardianship because they are alcoholics or diabetics. Often, in the eyes of the court, being old and spending money foolishly is enough.

"You've got a fundamental issue of human rights involved here," said Barry Lebowitz, who heads research on aging for the National Institute of Mental Health. "People are protected in their right to make foolish choices."

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Whatever the criteria, and whoever is making the judgment, in 94 percent of cases examined by the AP the petition for guardianship was approved.

"The system is just completely weighted against the proposed ward," said Elise Donnelly, who studied guardianship in North Dakota for the State Department of Human Services. "Once the petition is brought, you have to go in and prove you're not incompetent."

Said Judge Pfau from Indianapolis: "The attorney (for the guardian) wants the judge to just sign his name. He doesn't want notice (to the proposed ward), he doesn't want a 14-day wait, or a visitors program."

But the pressure to approve guardianships is strong. "If I'm too tough on attorneys, I'm not going to get elected again," Pfau said, "and that might sound cowardly to say that."

Many judges feel more court oversight would intrude on what they see as a family affair. Guardianship is generally there, they say, to help sons and daughters care for their parents.

"My personal feeling is it's a family responsibility. Families take better care of people than government," said probate Judge Melvin Rueger of Cincinnati. "Everyone presupposes that a son or daughter abuses a mother or dad and I just don't believe it."

Yet the AP's investigation found example after example of relatives dipping into the ward's money for ther own use. In most cases, the courts give tacit approval.

In Seattle, two nephews of a wealthy elderly woman now living in a nursing home have been paying themselves $800 monthly salaries for guardianship, plus cars, travel and gifts of $20,000. The court has approved the expenditures.

In Arkansas, a woman who was named guardian for her father-in-law in 1981 charged expenses that included $50 for one hour's work on "preparation for arrangements" for the man's burial, another $50 for an hour's work relaying word of the man's death to relatives and $71 for mileage to the out-of-town funeral.

In Oklahoma, a state agency discovered that a woman's former husband had himself appointed her guardian, discontinued his alimony payments to her, collected her Social Security payments then left the state.

San Diego Superior Court Judge Paul Overton recalls a case where a son took his mother, also his ward, to Thanksiving dinner at a relative's home.

"He charged her for mileage for coming and going, and charged her $8 and something for the dinner," Overton said. "One thing that really touches my heart, or I should say touches the seat of my pants, is to see a child charging to take care of a parent."

Whether children or strangers are the guardians, the end result for many wards is removal from their homes and confinement to nursing centers, the AP found. More than one-third of the wards seen in case files lived in their own homes before guardianship; about the same number was moved sometime during guardianship. Almost two-thirds of the wards lived in nursing homes at some time during guardianship.

For the guardian, a nursing home generally offers the easiest and most efficient way to care for the ward. Often wards are near death and round-the-clock care in an institution is needed. But sometimes it's overused.

"If you run a person through the guardian door into a nursing home," said Jim Wade, a former probate judge in Denver who has returned to private law practice, "the deprivation of rights is complete."

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ELDERLY WOMAN, FORTUNE AT EYE OF A LEGAL STORM

(By Lisa Levitt Ryckman, Associated Press Writer)

SEATTLE.—What happened to Aunt Linnie was part love, part money, part law and all soap opera.

In the space of a year, Linnie Gilley was judged competent enough to revoke a trust and change her will but too incompetent to handle her personal and financial affairs. The elderly woman and her fortune, estimated in 1980 at more than $750,000, became the eye of a legal storm that involved a dozen attorneys, bankers and relatives and ended only after she was placed under guardianship by two nephews.

In the last seven years, most of which Mrs. Gilley has spent in a nursing home, the co-guardians and other family members have received more than $250,000 in gifts from her estate. Such gifts are allowed under Washington State's guardianship law.

"You have to see primarily that the (ward) is well taken care of," said Eldon Anderson, attorney for the co-guardians. "And in my book, this gal is."

Before she was placed under guardianship, Mrs. Gilley was involved in two cases to change the terms of trusts set up by her husband, Roy Gilley, to care for her and to go mainly to charity after her death. In both cases, the banks fought the changes and questioned her competency.

George Nelson, Mrs. Gilley's nephew and co-guardian, said the family, including his aunt, was stunned to discover her money would go to charity.

"She wanted it to go to her family," said Nelson, who began caring for his aunt after her husband's death. "It was quite a shock, to say the least. I gave up my job at the railroad, and I had made a deal with her—I take care of her, and she'd take care of me.

"We got involved with lawyers and bankers, and they had me take her to a psychiatrist to prove she really wanted (her money) to go to her family."

In an August 1979 examination by psychiatrist George Christian Harris, Mrs. Gilley did not know the date, could not remember the doctor's name and could not compute figures.

Harris said Mrs. Gilley was suffering from "chronic organic brain syndrome" but that she made it clear she wanted her money given to her five nephews and nieces upon her death.

He concluded that Mrs. Gilley was compentent but added that "there should be some protective mechanism provided by the court to make sure that she is not unduly influenced . . ."

Less than a year later, another examination produced the same diagnosis, but this time it was used to have Mrs. Gilley declared incompetent and placed under full guardianship, relinquishing control of her fortune to nephews George and William Nelson Jr.

The question of whether the elderly woman was competent was "very touchy," Anderson said. "The only peculiar thing about it was that previously, the psychiatrist said she was able to do this, and then by that time, it was pretty well understood by all of us that she needed a guardian. It's worked out better for her."

"In a situation like this, when all the family members agree on what should be done, what's the alternative?" said attorney Robert Keolker, who served as court investigator in the guardianship proceeding.

However, Keolker said he never interviewed one of Mrs. Gilley's cousins, who was tracked down by George Klawitter, the court investigator in the most recent trust case. In an affidavit, the cousin said Mrs. Gilley's husband "attempted to keep her at a distance from her family, and, realizing that with her failing memory, she was and would be very vulnerable without him, attempted to make arrangements for her care and protection.

"His attempts to protect Linnie in general, and in particular from her relatives, seem to have failed," said the cousin, who asked that a non-family trustee administer Mrs. Gilley's financial affairs.

Klawitter said he and co-workers who became familiar with the case felt so strongly about it that his entire office attended the hearings.

"We were very definitely emotionally involved to the extent we felt there was some advantage being taken," he said.

Anderson confirmed that in the year after Roy Gilley's death, George or someone acting on his behalf tried to withdraw $200,000 from his aunt's trust fund for a business venture. William interceded, Anderson said.

"He (George) was trying to get the dough out and do various things. That's when we all got invovled," he said. "Since William got in there, he's tried to treat everyone fairly."

George Nelson said the attempt to withdraw the money was prompted by an attorney who gave him questionable advice.

"This lawyer was concocting this corporation," he said. "He was going to make jobs for the whole family. It all sounded good."

Keolker, whose five-page report was missing from Mrs. Gilley's file when the AP checked, said he was disturbed about the attempt to remove money from Mrs. Gilley's trust.

"I felt it necessary George be one of the guardians because he was the person Linnie Gilley trusted and loved the most," he said, "but I felt uncomfortable with the idea of George being appointed sole guardian."

For seven years, the guardians each have received salaries of $800 a month. William, an accountant, is paid to keep the guardianship books and monitor his aunt's investments and income. George has been paid for maintaining his aunt's home and car, living in one and driving the other.

Upkeep expenses for the house and vehicle, including utilities and cable TV, also are paid by the estate, at a cost of $6,500-$9,500 a year.

Each expenditure has been carefully recorded in meticulous annual accountings, and each has been approved by a judge or court commissioner.

"Every case is different," said Court Commissioner Maurice Epstein, one of several judges and court commissioners who approved the Gilley accountings.

Gifts to guardians are "normally something you watch out for," he added, but if "there is no question in anyone's minds this is her desire, when everybody is saying yes, we have an agreement, it's possible it would be her wish. Then it's not unusual."

Anderson said the gifts to the guardians and other family members, usually of $10,000 each, were an effective way to save estate taxes. "Over a period of time, you can save quite a bit of money," he said.

Under the new tax laws, estates of $600,000 and less are exempt from federal estate taxes, Anderson said. Now that Mrs. Gilley's estate has dropped below that level, the justification for annual gifts no longer exists. William, the accountant-nephew, agreed.

"So we're done making gifts," Anderson said. "That's going to be my position."

Klawitter said he was frustrated that he failed to convince the court that Mrs. Gilley was not competent to control her financial affairs during the trust action and that the family was "exercising undue influence to their benefit." Still, he sympathized with the difficulty of the court's decision.

"One is inclined to believe family is going to only wish to do the best for another family member," said Klawitter, who specializes in estate law. "But one of the things estate planners say is, it's not strangers and enemies who come to take your money—it's your friends and family."

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Guardianship transfers the decision making responsibility from a person declared unable to take care of himself and his affairs to another person.

Here is the language of guardianship:

Bond.—A type of insurance required in most guardianship cases to safeguard money under control of the guardian.

Competency.—The issue in almost all adult guardianship cases. The question faced by the court: Is the person competent, mentally and-or physically, to care for himself?

Conservators.—Wording varies from state to state, but conservators are generally the people appointed to care for finances. They are sometimes called guardians of the property, or just guardian.

Court Visitor.—A person appointed by a judge to evaluate the alleged incompetent. Sometimes a social worker, attorney, physician or court officer.

Due Process.—The legal doctrine that guarantees statutory and constitutional rights. Some attorneys believe guardianship proceedings, because they often do not follow normal court practices, violate these due process rights.

Estate.—The term used to describe the assets of an incompetent: money, house, pensions, investments, etc.

Guardian ad Litem.—A person appointed by the court to evaluate a person for guardianship proceedings. Often an attorney appointed by the court, sometimes a social worker. It is this person's job to decide what is best for the ward, not to represent the ward's wishes.

Guardianship of the Person.—A guardianship covering only matters affecting the ward, such as housing and medical care.

Guardianship of the Property.—A guardianship covering only matters affecting the estate of the ward, sometimes called conservatorship.

Limited Guardianship.—A partial guardianship, one where the judge restricts the guardian's powers in some way.

Power of Attorney.—Sometimes touted as an alternative to guardianship, it permits a person to transfer some or all authority over his life and estate to a person of his choosing. A simple legal contract, it does not require attorneys or the courts.

Private Fiduciary.—A person, usually an attorney, who serves as a guardian or is hired by a guardian to perform all the duties.

Public Guardianship.—A publicly funded office that acts as guardian, usually, but not always, for indigents. More and more states are establishing public guardian offices.

Special Master.—A person, usually an attorney, appointed by the court to act as a judge in such matters as guardianship.

Ward.—The person placed under the guardianship.

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AP PROJECT TOOK ONE YEAR AND 67 REPORTERS AND EDITORS

NEW YORK.—The Associated Press investigation of the nation's guardianship system took one year and was put together by a team of 67 AP reporters and editors in the 50 states and the District of Columbia.

Hundreds of judges, lawyers, professors, social workers, wards and guardians were interviewed. AP staffers examined more than 2,000 guardianship files around the country, and their findings were placed in a computerized database for analysis.

One reporter was assigned to the project in each of 46 states; because of geographical size and large elderly populations, two reporters worked on the projects in Florida, California and Texas and three in New York.

The project led to a six-day series of stories on AP's national news wire and packages of stories for each state news wire, totaling more than 300 nationwide.

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AP TURNED TO LEGAL COUNSEL TO GAIN ACCESS TO GUARDIANSHIP FILES

NEW YORK.—The Associated Press reporters who examined more than 2,200 guardianship files nationwide were generally granted access to those files by courts, but the AP had to use legal council to gain access in Delaware, New Mexico and New York.

In Delaware, AP national writer Larry Kilman was denied access by William T. Allen, head of the Chancery Court and the state's highest judicial officer. Working through its legal counsel of Roger & Wells in New York City, the AP asked Allen to grant access, citing the state constitution and state statutes, the U.S. Constitution and reported cases. Allen then reversed his position and granted access.

In New Mexico, reporter Ed Moreno in Santa Fe was denied access to files in Bernalillo County, which has about one-third of the state's population. Again AP cited the legal basis for access, and Judge Philip Ashby, presiding judge of the second judicial district, approved access.

In New York City, AP reporters Judie Glave and Mitchell Landsberg were refused access to conservatorship files in Brooklyn by the Kings County clerk. After the AP cited the legal basis for access, Supreme Court Justice Leonard E. Yoswein overruled the clerk and granted the AP access.

Among the files the AP examined was that of "Son of Sam" killer David Berkowitz. It was the first time any reporter had seen the file on Berkowitz and led to a story by Glave, who discovered last month most of his assets had been ordered turned over to the surviving victims of the year-long shooting spree that resulted in the deaths of six and woundings of seven and ended with his arrest in August 1977.

The AP took legal action to gain access to conservatorship files in other parts of New York state as well.

The AP was initially denied access in the upstate counties of Albany, Cattaraugus, Niagara and Yates. Judges in Cattaraugus, Niagara and Yates counties reversed themselves last week and granted the AP access, with the provision that the AP would not identify the wards whose files were examined in the latter two counties.

In Albany County, Guy D. Paquin, the clerk of the county court and the Supreme Court, repeatedly denied the requests of staffer Randolph Picht to see files. Craig A. Dening, assistant county attorney, then wrote to the AP and explicitly denied access to the conservatorship records held by the clerk.

On Sept. 3, the AP brought suit in Supreme Court in Albany, and Judge Edward Conway signed a show cause order requiring Paquin to explain why he should not permit AP access to conservatorship files. Facing a hearing on Sept. 18, Paquin reversed his position Sept. 15 and permitted unrestricted access, again with the understanding the AP would not identify wards by name. Picht began surveying the previously closed files last week.

Commenting on the AP's effort to gain access to guardianship and conservatorship files, Richard N. Winfield, a partner in Rogers & Wells and general counsel to the AP, said:

"A court-appointed conservator or guardian has a tremendous responsibility, literally handling the life, the funds and the property of his or her ward. This power should never be conducted in secret. The potential for abuse is too high.

"That is why AP has fought to get access to these court records. That is the best way to answer the question, how is the system working? The court records in these conservatorship and guardianship cases are a key resource—they give an insight into how the courts are functioning both on an individual and overall basis."

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How Many Under Guardianship?

How many elderly people are under guardianship in this country?

No federal agency tracks the number; guardianship is a very local affair.

Few state officials collect the number from the dozens, sometimes hundreds, of probate courts within their state borders.

Even courts charged with tracking guardianship cases told Associated Press reporters they had no idea how many cases were under their jurisdiction.

AP staffers counted cases in representative counties and combined that data with tallies from the clerks who did track guardianships to estimate the number of guardianships of the elderly in each state, and nationally.

Across the country, the news agency found, 300,000 to 400,000 elderly are under guardianship. Each guardianship lasts an average of about three years.

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Probate Courts Vary in Scope and Staff

In most states, probate court establishes and oversees guardianship of the elderly.

It is a court that largely deals with paperwork, ruling on estates and wills. It also steps in to establish the custody of children who have lost a parent or parents. In many states, probate court also decides if an adult needs treatment for mental illness, drug abuse or alcoholism.

Most probate courts are part of the state court or county court system. Most probate judges are lawyers, but some are not, and some work just part-time.

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Brief Looks at Guardianship in Some States

Pennsylvania—Guardianship Law Outdated and Ripe for Abuse

(By Bob Dvorchak, Associated Press Writer)

Pittsburgh.—Pennsylvania's guardianship law is outdated, largely unmonitored and ripe for abuse.

"Guardianship is the worst. The law is archaic. It's antediluvian," said Richard Levine, a Pittsburgh attorney and founder of the Elderly Citizens Resource Center.

The courts supervise incompetents, but only one of the state's 67 counties knows how many guardianships it has.

Only one county demands periodic financial accountings. Only one county requires that all alleged incompetents have lawyers. Only one county has investigators to follow up on wards. The state has no public guardian.

An Associated Press check of 106 cases found:

A Cambria County woman bought an $11,000 Cadillac and gave her daughter a $1,000 wedding present with her incompetent mother's money. The woman was reprimanded but did not have to repay the estate because she was the only surviving heir.

A Bedford County woman will repay $81,558.04 to her incompetent brother-in-law after she was sued by the local Area Agency on Aging. She claimed the money was a gift.

A Pittsburgh lawyer kept $25,000 of his ward's Social Security checks and failed to pay her hospital bills. He was disbarred, and the local district attorney was asked to look into criminal charges.

The survey also confirmed:

A Pittsburgh accountant spent $156,202 of his ward's $161,968 estate in 22 months. His guardian fee was $24,175. He kept $28,954 of a property sale and paid himself $20,000 for buying his ward a lottery business. A court-appointed master recommended that he repay $123,295. The local district attorney is investigating.

A Philadelphia judge paid himself $44,252 of his ward's $150,602 estate, charging $25 for each visit and $25 an hour for chores like changing light bulbs and taking

out trash. The judge repaid the estate $32,252 and the state judicial ethics committee is aware of the case.

In Berks County in 1978, the average length of 116 guardianship hearings was 2 minutes, 15 seconds. All were declared incompetent, according to the county's Mental Health Association.

NEW YORK—NEW YORK'S SYSTEM HAPHAZARDLY ADMINISTERED

(By Mitchell Landsberg, Associated Press Writer)

NEW YORK.—New York state's conservatorship system, which oversees the assets of more than 9,000 elderly and disabled people, is haphazardly administered and contains safeguards that are often ignored.

An Associated Press survey of 119 court files throughout the state, along with interviews with dozens of court officials and legal experts, revealed a system that is frequently overburdened and underscrutinized.

Among the findings:

Despite the law restricting their powers, conservators are increasingly involved in life-and-death medical decisions for their wards. Judge Harold Tompkins of the Bronx said he recently appointed two conservators in right-to-die cases, despite provisions in the law that give conservators power over financial matters only. Both patients were allowed to die.

Conservators are required to give annual summaries of how their wards' money was handled. However, statistics gathered by the AP show that on average, accountings are filed once every 21 months. In some cases, years have gone by without an accounting, opening up the possibility for undetected abuse.

In some upstate counties, judges appear to have violated the law by holding hearings in which the person whose finances are at stake, the ward, is neither present nor represented by a lawyer.

The person whose mental ability was questioned participated in his or her own court hearing in only five of the 119 cases. The law states that the proposed ward should be present if possible.

For all its procedural problems, the AP found that the system, which gives a court-approved conservator control over another person's finances, has been improved as a result of reforms enacted after several scandals over the last decade.

The most recent involved John Zaccaro, the husband of 1984 Democratic vice presidential candidate Geraldine Ferraro, who was removed as a conservator after borrowing $175,000 from his ward's estate for private investments.

The incident prompted several changes, including the release of a monthly county-by-county list of people named as conservators. The assumption is that judges will be less likely to appoint political cronies if the process faces public scrutiny.

WASHINGTON STATE—MANY PEOPLE IGNORING THE LAW AND COURTS NOT STOPPING THEM

(By Larry Ryckman, Associated Press Writer)

SEATTLE.—A decade after Washington State pioneered a guardianship law to protect senior citizens threatened with the loss of their rights, many people involved are ignoring the law and the courts are not stopping them.

An investigaton by The Associated Press of guardianships for elderly people in Washington revealed many guardians fail to file annual reports on how they spent a ward's money—a violation of the law—and that courts are unable to keep track of the files. Without the annual reports, courts do not know whether guardians are stealing from their elderly wards or mistreating them.

And in most cases, the investigators appointed by the courts to protect the rights of the elderly waive the proposed ward's right to attend court competency hearings.

A guardianship allows other people, usually family members, to assume total control of the elderly ward's personal and financial affairs, to pay their expenses and make medical decisions. It is a system designed to help elderly people who have become unable, through illness or other circumstances, to take care of themselves.

But once declared incompetent and placed under full guardianship, the elderly lose all rights, including the right to vote, to buy or sell property and to enter into contracts.

"It's the most severe civil thing we can do to someone," said Seattle lawyer William Dussault, who drafted the 1975 revision of Washington's guardianship law.

"Placing a person under guardianship puts them in a position similar to that of being a convicted felon."

Among the findings in AP's statewide guardianship investigation, which included a random check of 46 files:

A court commissioner declared a woman incompetent and placed her under guardianship five minutes before she arrived for her hearing.

A court commissioner placed an elderly woman under guardianship without appointing an independent court investigator to evaluate the woman's competency.

A woman charged with managing her mother's $1 million estate has gone seven years without any court supervision, a violation of the law.

Lawyers, judges and others involved in guardianships, some of whom are ignorant of the law's provisions, acknowledge there are flaws, but say they believe the system works in most cases. The problems, they say, arise not from the law itself but from its application.

MICHIGAN—MISUSED AND POORLY MONITORED

(By Mark Fritz, Associated Press Writer)

DETROIT.—Many of Michigan's elderly people are being stripped of their homes, their incomes and their most basic rights under a misused and poorly monitored legal process that varies wildly in the state's 83 counties.

While guardianship is intended for people who are physically or mentally incapable of running their own lives, an Associated Press study found that this obscure legal process is being used routinely by:

Hospitals, to discharge elderly people into nursing homes or remove them from life-support systems after their insurance runs out.

Doctors, to protect themselves from malpractice suits.

Nursing homes, to insure bills will be paid.

The Michigan Department of Social Services, which is funneling people to professional guardians it considers undesirable.

As of June, more than 25,000 adults in Michigan were under guardianship, conservatorship or both, according to data collected from Michigan courts.

These guardianship rulings originate in Michigan's 79 probate courts in hearings that often last but a few minutes but usually have lifetime effects.

There is so little monitoring once guardianship or conservatorship is granted, however, that bed-ridden elderly people are increasingly having their assets misused, in some cases plundered, by the very people who were appointed to protect them.

Courts say families of older people are becoming more reluctant to act as guardians. Filling part of the void are growing numbers of professional guardians. Among them are Detroit-area lawyer Alan May, a prominent Republican Party activist who acknowledges he provides no personal attention to his 400 wards, and the Rev. Charles Hilliard, the public guardian in Clare County, a for-profit private guardian in nine other counties and co-owner of a string of nursing homes.

NEW HAMPSHIRE—BOASTING ONE OF THE NATION'S BEST LAWS

(By Wendy Mitman, Associated Press Writer)

CONCORD, N.H.—Nine years ago, the word of three "inquisitors" could determine whether an elderly New Hampshire resident was competent to marry, own property, decide where to live and travel.

All that changed in 1979, when repeated abuses and a growing awareness of the rights of the mentally retarded, handicapped and elderly prompted a drastic revamping of the state's archaic guardianship law.

New Hampshire's law is one of the best in the country at protecting elderly people who would otherwise stand to lose fundamental rights.

Nevertheless, there are problems, chief among them the inability of probate courts to keep up with the growing caseload, which weakens their safeguarding function.

The state law goes well beyond those of most other states by granting guardianships based on specific evidence of what a person can and cannot do, rather than just the testimony of psychiatrists and other doctors.

New Hampshire's probate courts generally use an 11-item order detailing what the ward cannot do. The list includes: traveling or deciding where to live; consenting to medical treatment; giving gifts; possessing or managing property, and making contracts. Probate judges thus determine the least restrictive way for people to live.

FLORIDA—GUARDIANSHIP SYSTEM FLAWED, OVERBURDENED

(By Dan Sewell and Ron Word, Associated Press Writers)

MIAMI.—Florida, with the nation's fastest-growing large elderly population, has an outdated guardianship system that can allow those deteriorated mentally or physically by age and ailments to be stripped of their civil rights in assembly-line legal proceedings.

And the system often does little to monitor what happens to the people it has left virtually defenseless.

In Florida, where the guardianship statutes last were changed 13 years ago, The Associated Press studied more than 100 incompetency proceedings and guardianships and found that:

Judges routinely declare people incompetent after minutes-long proceedings that the proposed wards rarely attend.

Unlike guardianships of minors, which usually end automatically when the ward reaches age 18, the declaration of incompetency and guardianship is nearly always final.

After the guardian is appointed to control the person's life and finances, Florida courts usually pay little attention to what happens.

State law requires the guardian to file an annual accounting detailing the finances of the ward's estate and whether the ward has been visited and examined medically, but those requirements weren't met in a third of the cases studied.

In most counties, judges rely on the testimony of a few psychiatrists who make their conclusions after brief examinations. Those brief examinations, some psychiatric experts say, fly in the face of medical research that demonstrates more than 100 reversible physical or mental ailments that can temporarily produce symptoms such as confusion, disorientation and memory loss.

The records of the state court administrator indicate there are 20,380 adult guardianships open statewide, and that the number of guardianships opened annually has steadily increased, jumping from 4,737 in 1978 to 8,775 last year. An annual filing rate calculated by Florida State University researchers, and adjusted to reflect the AP's finding that most wards live no more than two years, indicates 15,000 to 25,000 elderly, mentally ill or developmentally disabled people are under guardianships in Florida.

CALIFORNIA—SIGNIFICANT LAPSES FOUND IN MONITORING CALIFORNIA GUARDIANSHIP

(By George Garties and Laura Castaneda, Assocated Press Writers)

California has created a system of safeguards for guardianship, including public investigators in each county, that is considered among the most advanced in the nation.

But an Associated Press study of randomly selected court files and dozens of interviews with social services experts, lawyers, judges and the guardians and wards themselves has found significant lapses in the process of guarding the guardians.

Among the findings:

No central control exists for the system of conservatorship, and the methods and philosophies of those who administer it vary considerably from county to county. Still, the law has been overhauled and fine-tuned over the last two decades to protect elderly wards from physical abuse and financial exploitation.

Once set in motion, the system tends to carry the elderly inexorably toward dependence and placement in nursing homes or other institution, whether they need it or not.

Despite judicial scrutiny and the establishment of a corps of court investigators, it is still possible for a conservator to steal his ward's money in California. One company that provides bonds for conservators sets aside a reserve of $2 million a year to cover default payments to wards.

No one place keeps track of conservatorships, but a county-by-county check found just under 30,000 active conservatorship cases, the majority involving elderly people.

"We have people who come from the East or the Midwest to California, the 'Golden State,'" says Lura Otto Scoville, a former court employee who recently hung out her shingle as a professional conservator. "They either don't have families or they're back East and they can't come out here."

Professional conservators take court-approved fees out of their wards' estates in return for managing their money and their lives. For those without money or friends, there are public guardians in each county.

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PART II: MANY ELDERLY NEVER GET THEIR DAY IN COURT

EDITOR'S NOTE.—Elderly Americans facing guardianship enjoy none of the legal safeguards extended to criminal defendants. They are often placed under someone else's care without legal representation. This is the second part of a six-day series, "Guardians of the Elderly: An Ailing System."

"If a person is a fool, let this person and his goods be under the protection of his family or his paternal relatives, if he is not under the care of anyone else."—Twelve Tables of Rome, 449 B.C.

(By Fred Bayles and Scott McCartney, Associated Press Writers)

FORT LAUDERDALE, FLA.—Billie sat at the table, trying to joke with the social workers and lawyers sitting around her. "Are you talking about me?" she asked the strangers who said they were there to help.

The man beside her, her lawyer she was told, softly explained she needed a guardian, someone who would handle the everyday worries.

"Does this mean I won't be able to go back to where I live?" the 74-year-old woman asked. "I still want to get out and take care of my house and do shopping. I feel well enough to be on my own."

Despite her doubts, Billie was declared incompetent and assigned a guardian: another stranger who would control her life, from where she would live to how her money would be spent. It took only a few minutes.

The informal judicial hearing witnessed by AP reporters in the Fort Lauderdale boarding home was not unusual. An average of 10 people a week are placed under guardianship in this community of retirees. Nationally, 300,000 to 400,000 senior citizens are under guardianship.

What was unusual was that Billie had her "day in court" at all.

A year-long investigation by The Associated Press found that senior citizens facing guardianship are often denied courtroom rights considered essential to criminal defendants and those being committed to mental hospitals.

A review of more than 2,200 cases around the country showed 44 percent of the elderly were not represented by attorneys; almost half did not attend their own hearings.

In fact, more than one in four cases had no hearings. And in places such as Cleveland or Charlotte, N.C., a proposed ward may not even get a judge—a court clerk conducts hearings and issues the ruling.

The AP also found laws vague in defining who needs guardianship, lax standards in determining the proposed ward's medical and psychological status and insensitivity toward the elderly throughout the legal process.

Combined, these factors make it very easy to get a guardianship and hard for the elderly to defend themselves against the process.

"When somebody goes to jail, the court system has bent over backwards with due process. But there is no such thing with a guardian," said Ina Katich, a Denver expert on law and the elderly.

But the process of placing someone under guardianship is not just a question of legal rights. It involves issues of medicine, psychiatry, geriatrics and, importantly, society's attitudes toward the elderly.

D'Jean Testa, a Legal Services attorney in Phoenix, recounts story after story of people who faced guardianship because their actions did not fit what society expects of older people.

In one case, a daughter sought guardianship for her mother because the elderly woman wanted to buy a camper and tour the country with a male friend. In another, a son sought guardianship to stop his father's plans to remarry.

"If you're old, you can't be foolish," said Ms. Testa.

This bias is reflected in the wording of guardianship law and the way courts handle their wards.

Guardianship is granted when a court believes a person is incompetent: unable to handle his affairs or care for herself. But a survey by the American Bar Association found that in 25 states "advanced age" is enough cause to find someone incompetent. Other reasons are equally vague, from "improvidence" in Ohio to "spendthrift" in Massachusetts and "habitual drunkard" in several states.

"Advanced age just isn't a good enough reason to appoint a guardian," said Gwen Bedford, a national director of the American Association of Retired Persons. "You've got to tell the difference between someone who is just eccentric and someone who really is incapacitated."

Advanced age was given as the reason for incompetence in 8 percent of the cases the AP studied.

While the competency of the elderly comes under close scrutiny, little is done to tailor the legal process to their special needs and problems.

Notices of guardianship petitions are often printed in hard-to-read legalese. For example, old people facing guardianship in Texas receive this notice calling them to court:

". . . at or before 10 a.m. of the Monday next after the expiration of 10 days after the date of service of this citation by filing a written answer to the application of (petitioner) filed in said court on the (date) alleging said ward has no guardian and praying for the appointment of the person and estate of said ward. At said above mentioned time and place, said ward and all other persons may contest said application if they so desire."

Such warnings, sent by mail or delivered by sheriff's deputies with no other explanation, do little to inform senior citizens of their rights or the implications of guardianship.

Only 14 states specifically require that the elderly be informed of their rights and what freedoms they would lose under guardianship.

"People have the right to defend themselves and people need to know that," said Paul Wharton, an attorney with the Utah Legal Services Senior Law Center. "What really ought to be considered is providing notice, like a Miranda warning. We give criminals warning, why not our parents?"

While the proposed ward's medical status is the basis for determining incompetence, at least 11 states require no medical evidence other than the allegations of the petitioner. In fact, 34 percent of the cases examined nationwide by the AP showed no medical evidence supporting petitioners' claims; in 16 percent, the only evidence came from the petitioners.

Tod Porterfield, an 83-year-old Albion, Ind., farmer, was placed under guardianship and forced into a nursing home on the strength of a petition saying he suffered from Alzheimer's disease. It was later discovered the allegation came from a social worker at a hospital where Porterfield was treated for stomach problems.

"No doctor ever diagnosed me," said Porterfield, who eventually had the guardianship overturned. "I never talked to a doctor or an officer of the court."

In some states, a simple note or fill-in-the-blank form from a family physician is enough: a Woonsocket, R.I., woman was placed under guardianship on the strength of a scrawled doctor's note that read, "She is incompitent (sic) in signing or managing her check."

Courts in 11 states appoint visitors to examine the ward and report back to the judge. The skill of these visitors and the detrail of their reports vary widely.

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In California, trained court employees have a checklist of questions they must answer for the court. In Oregon, the AP found instances where the visitor was the secretary for the attorney bringing the petition. A special master in Phoenix said he appointed visitors recommended by the petitioner.

Few states define what doctors or visitors should look for or how they should conduct their examinations. Many diagnoses fail to explore whether the condition is temporary or chronic. In many cases the examining doctors are unfamiliar with the proposed ward's medical history or what medication they are taking. Some doctors base their decision on non-medical determinations.

"Really, what is most important to me is whether the person could be victimized, whether the guardian will help the person," said Dr. Cesar Hernandez, a psychiatrist who performs examinations for the Broward County, Fla., courts.

Hernandez also considers the condition of the person's home and his appearance.

"You talk to the person," he said. "You see if they are well-groomed, overweight, underweight, antagonistic, depressed. Can they make good conversation?"

Case files reveal brief, often perfunctory medical examinations with even briefer diagnoses: "forgetful," "diabetes" and others.

Medical experts note that because the elderly are sensitive to changes in medication, they may seem to be foundering when the condition is actually reversible. A simple vitamin deficiency can cause temporary memory lapses.

"What some doctors want to do is have some sort of cookbook form where they could diagnose the patient in five or 10 minutes," said Dr. George Grossberg, direc-

tor of geriatric psychiatry at St. Louis University School of Medicine who is studying guardianship examinations for the National Institute of Mental Health.

During examinations, some doctors assume the role of inquisitor, and elderly patients may react nervously, Grossberg said. "It's easy to jump to conclusions when you push people."

As terrifying as the legal process can be, only 28 states mandate legal representation for people facing guardianship; 12 leave it optional, and 10 require no representation.

Other studies made similar conclusions to the AP's finding. A look at Los Angeles courts by the National Senior Citizen Law Center found that 96 percent of proposed wards are not represented.

On the other hand the person seeking to become a guardian is nearly always represented by an attorney whose fee, along with that for the proposed ward's court-appointed attorney, is charged to the elderly person.

"It's ironic the very person that should be represented at the hearings is not represented by counsel," said Paul Zaverella, a Pittsburgh judge.

But when attorneys are appointed, sometimes picked from a courthouse list and paid a limited fee, they often serve only as rubber stamps.

In Fort Lauderdale, court-appointed attorneys receive $125 to conduct a brief interview. The attorneys often waive the entire hearing process when they believe guardianship is best for the person.

"You just talk to them at great lengths for five to 10 minutes and you can tell if they're competent or not," said Victor DeBianchi Jr., a Hollywood, Fla., attorney assigned by the court to represent Billie.

One Fort Lauderdale file contained a medical examination saying an elderly woman was more coherent in the morning than in the evening. Yet the attorney appointed to represent the woman interviewed her at 7:20 p.m., found her incoherent, waived the hearing and, in effect, made the judge's decision.

Dr. Dennis Koson, a forensic psychiatrist, looked at 200 guardianship cases in the Broward County, Fla., court system as an associate law professor at Nova University. He found that court-appointed attorneys told judges hearings would not be necessary 90 percent of the time.

In 44 percent of the cases, the proposed ward's attorney served a dual role as a member of the examining committee called upon to determine the person's competency.

"That was shocking," said Koson. "Their own attorney was making the determination."

Attorneys in Fort Lauderdale were waiving clients' rights so often that the state appeals court this summer ruled that hearings must be held in all guardianship cases.

"What the decision says is that an attorney cannot give away a client's rights, something that was done regularly," said Nancy Trease, the Legal Aid attorney who brought the suit that led to the ruling.

Attorneys who want to help clients trying to fight guardianship often find themselves at odds with judges who believe lawyers should do what they think best for the proposed ward.

"The judge wants to know what you're doing in his courtroom wasting time," said Steve Feldman, a Philadelphia lawyer.

Judge Francis Christie, a Miami probate judge, sees no need for an attorney's advocacy if it is clear the proposed ward needs help.

"I have told the attorneys that they should not formulate and adopt the Clarence Darrow philosophy," he said. "If a person is incompetent they should have a guardian. That should be obvious to the attorney once they meet the client."

Casual attitudes toward the rights of the elderly are repeatedly reflected in guardianship case files. In Mississippi, the AP found a case in which Lenore Prather, now a state Supreme Court justice, had presided over a guardianship case, her husband had served as the petitioner's attorney, and the proposed ward was also a relative.

When asked about the case, Prather acknowledged she should have followed state bar association ethics guidelines and noted the family ties in the court record.

"It was a family situation where there was no contest," Prather said.

Many of these factors were at work when two attorneys, two social workers and a probate master, an attorney deputized to serve as a judge, held the hearing to determine Billie's competency.

The hearing came about only because one psychiatrist on the three-person examining committee found her competent. DeBianchi, Billie's attorney, originally waived the hearing, telling the court his client was "arrogant" and "in my lay opinion she appeared to be in the beginning-to-middle stages of Alzheimer's disease."

"She can fool you at the beginning, but after a while you can tell she's incompetent," he said.

Billie was asked a series of questions to test her competency. Bright and quick-witted in conversation, she faltered when asked if she owned her home. She could not remember the name of her bank or the names of the last several presidents.

After a few more casual questions, the special master ruled Billie incompetent and assigned Nathan Sobel, a retired man with several other wards, as her guardian. The court has had no further contact beyond paperwork. She remains in the boarding home, still hoping to return to her small apartment.

Sobel said a return is not likely.

"In talking with the social workers, they don't think she is on the way to recovery," said Sobel. "Right now she's being well taken care of and that's the most important thing."

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JUDGES, LAWYERS OFTEN DISAGREE ON FUTURE DIRECTION OF GUARDIANSHIP

(By Fred Bayles and Scott McCartney, Associated Press Writers)

NAPLES, FLA.—A national group of judges wants the guardianship railroad to slow down, but other judges aren't rushing to put on the brakes.

The group, working with the National Judicial College in Reno, Nev., and the American Bar Association, last year drafted an overhaul of guardianship law. Among other things, it calls for making guardianship an adversarial proceeding by appointing attorneys for potential elderly wards in every case, and requiring detailed medical reports, independent examinations and courtroom hearings.

They've even urged their colleagues to put notices of guardianship petitions in plain English and in type large enough for the elderly to read.

"We need an attitude change and we need resources," said Michigan state court administrator Robert Payant, a leader among the reformers.

Payant presented the recommendations to the National College of Probate Judges' annual convention here in May. The response was mixed.

Some judges argued that the proposal amounted to unnecessary government intrusion. Some believed the system was working fine. Some said the ideas were impractical and expensive. And some said they know what's best for the elderly.

"These people don't want to buy that much due process. It could all cost $4,000 a case, and families don't want to spend that," said Richard Metcalf, a Columbus, Ohio, probate judge. "I don't think the public gives a damn about going through legal gymnastics."

Metcalf uses his bailiff to deliver notices of guardianship petitions. He assumes he'll hear from senior citizens who oppose guardianship.

"If you're competent, defend yourself. That's basically it," he said.

"How many years have we had guardianship laws which apparently worked successfully over the years?" said Cincinnati probate Judge Melvin Rueger. "All of a sudden someone says there's a need for change. They pick out a few isolated cases. I just don't think it's needed."

Within the Bar, lawyers have begun examining guardianship and offering ideas for changes, too. The ABA's Commission on Legal Problems of the Elderly joined in the Reno conference, for example. But there is resistance, too, often from attorneys who work in trust and probate fields.

In Florida, factions are split between the Disability Law Committee of the Florida Bar, which says current laws are "archaic and obsolete," and the Real Property Probate Law Committee, which has called only for refinement of current laws.

"Their philosophies are so different, I don't know if we'll ever get a consensus," said John Noland, a Fort Myers attorney appointed by the Bar to mediate between the two sides. "There are good lawyers and well-intentioned people on both sides, but they can't agree on what is right."

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DIAGNOSING INCOMPETENCE IS TRICKY, ILL-DEFINED JOB

(By Fred Bayles and Scott McCartney, Associated Press Writers)

FORT LAUDERDALE, FLA.—As a court examiner, Dr. Cesar Hernandez has found old people crowded into the corners of their homes by the heaps of junk mail and newspapers and garbage they refuse to throw out.

He tells of roach-infested homes reeking of human waste, where inhabitants were too ill or too confused to make it to the bathroom. Hernandez once went to interview someone and found a corpse instead.

"You go to the house and there you can find all kinds of things," said the psychiatrist.

Hernandez examines elderly strangers an average of once a week, to see if they are incompetent, unable to care for themselves and in need of a guardian. His is a key role in deciding if people will lose their basic rights and be made the wards of guardians.

Hernandez's examinations, lasting from 45 to 90 minutes, rely heavily on conversation with the proposed ward. "With this face-to-face talk you are testing. . . . Is he in contact with reality? Are they coherent? Are they relevant? Is the conversation goal-directed? Is there a future planning or outlook on life?"

This duty is repeated tens of thousands of times each year throughout the United States. A survey of more than 2,200 case files by the Associated Press has found that a variety of doctors, lawyers and laymen do the job, relying on a wide, and often vague, variety of standards.

The AP survey noted many examples of people placed under guardianship after brief examinations by plastic surgeons, pediatricians, gynecologists and urologists. Often, the proposed ward's mental abilities and medical problems were judged by lawyers and social workers and, in a smaller number of cases, by the person seeking guardianship.

Court reports ranged from detailed medical evidence to one-sentence summaries citing age as the main reason for incompetency.

One common diagnosis, "unable to care for self or property," was listed without further explanation.

Some medical and legal experts feel this is a dangerously casual handling of a complex legal and medical question.

"It is a disturbing issue," said Peter Strauss, a New York attorney who specializes in legal problems of the elderly. "The standards vary greatly. It is often unclear what is meant by incapacity. Someone might not be able to balance a checkbook, but does that mean they should lose control of their lives?"

Concern over the way the courts determine incompetency has led the National Institute of Mental Health to look at the issue. Dr. George Grossberg, director of geriatric psychiatry at the St. Louis School of Medicine, has been studying the right—and wrong—ways competency exams are done.

"The suspicion is that today it is possible for an elder adult to be brought to a doctor by a son or daughter, for that doctor to do a very cursory type of exam and, based on that, to sign a note saying this person needs a guardian," said Grossberg.

But the psychiatrist said judging someone's competency requires a thorough mental and physical evaluation that defines what a person can and can't do for himself.

Grossberg has proposed that wards cook a simple meal and go shopping at the hospital's gift shop.

"You have to ask yourself how impaired they are," he said. "People can live 20 years with Alzheimer's disease and be able to do many things. They don't need to have their constitutional rights taken away from them."

Grossberg also considers the proposed ward's medical history, including what medication he or she uses. "The most common cause of delirium in the elderly, and one that is a potentially reversible condition, is reaction to medicines," he said.

Yet little of this testing and questioning is reflected in the files. Hernandez said he checks medications he finds in the ward's home and peers into refrigerators, but his report to the court relies largely on the appearance of proposed wards and their homes.

"In a conversation you may get a lot of information," said Hernandez, whose own conversation is in heavily accented English. "Is the person well-groomed? Is the person overweight or underweight? Is their attitude cooperative, belligerent, indifferent?"

For Hernandez, a key question is whether he feels the person can be taken advantage of by others.

"The purpose of guardianship should be and is to prevent victimization," he said.

Yet advocates for the elderly argue such conclusions by doctors are legal, not medical.

"It's always easier for lawyers to be doctors and doctors to be lawyers," said Barry Lebowitz, head of research on the aging for the National Institute of Mental Health.

Lebowitz hopes his agency's research will provide information for better laws and procedures. Strauss said new laws should be based on criteria set by doctors, lawyers and ethicists.

"What we're trying to do is determine how we judge judgment," he said. "That's a tough question."

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WOMAN FIGHTS BACK FROM COMA, THEN AGAINST GUARDIANSHIP SYSTEM

(By Dan Sewell, Associated Press Writer)

PLANTATION, FLA.—Marguerite Van Etten, a veteran Daughters of the American Revolution activist, turned out to vote every chance she got.

But when she tried to cast her ballot in Broward County elections in spring 1984, she was told she no longer had the right. Outraged, she called county officials and learned they knew her as "83-0449; Van Etten, Mental Incompetent."

Ms. Van Etten, now 66, was on her way to an assignment as a state social services dietician the morning of June 8, 1983, when a traffic accident she can't remember left her comatose.

It took her two months to recover her full mental faculties. It took much longer to recover the rights she had lost.

One of the widow's three daughters petitioned the county court to find Ms. Van Etten incompetent and in need of a guardian. Court records show she was served with notice of the petition at Bennett Hospital on June 29, a time when her doctor's notes indicate she was alert only sporadically.

On July 5, a court form said, Ms. Van Etten indicated she "did not want to attend" her hearing. Doctor's notes that day say she wasn't responsive.

Her court-appointed attorney waived the hearing. Ms. Van Etten was declared incompetent and her daughter was appointed guardian.

Ms. Van Etten recovered in August, and her daughter moved her to her home in Maryland. But Ms. Van Etten didn't like living with her daughter and wanted to claim her Florida insurance benefits, so she returned to Broward County in February 1984.

Her furniture had been sold, she said, her driver's license had been taken away and she had trouble drawing on bank accounts. She had lost her job and couldn't get a new one.

"The professional damage is tremendous to me personally," she wrote to the court.

Not being able to vote was the final straw.

"They let illiterates vote, but not me," she said.

Well-educated and combative, Ms. Van Etten frequented the courthouse and libraries to study the law.

"I found out that criminals had more rights than I did," said Ms. Van Etten, who had taken a law course while earning a master's degree in behavorial sciences from Nova University in 1981.

While she was officially incompetent and without her civil rights, she pointed out to the court, she gave a deposition in a state Health and Rehabilitative Services court case. She also was able to continue paying her bills on her own.

With only a sleeping bag as furniture in her house, which had been put up for sale, Ms. Van Etten began claiming her state benefits and waging a solitary legal battle. On her own, she made appointments with two psychiatrists who examined her and found her competent.

Ms. Van Etten went to her guardian's attorney, whose father had handled her past legal work, and demanded he get her rights back.

On April 3, 1984, she was restored to competency.

"I was lucky. I consider myself one of the luckiest people alive because I was able to (regain competency). But I don't want what happened to me to ever happen to anyone else. All you have to do is have a stroke or be in a coma and they can take away all your rights.

"Unless there's someone to monitor, this could happen to anybody," she said.

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As World Turns Grayer, Guardianships Scrutinized

(By Lisa Levitt Ryckam, Associated Press Writer)

As the globe grows grayer, industrialized nations around the world have begun to examine and fine-tune guardianship systems to better serve and protect elderly people unable to care for themselves.

An estimated 416 million people worldwide were over age 60 in 1985, according to United Nations statistics. That number is expected to increase by 30 percent in the next decade; by the year 2025, population specialists predict the ranks of senior citizens will have swelled to more than 1.1 billion.

Faced with such projections, some countries are acting now to improve guardianship systems that allow one individual to handle the personal and financial affairs of an elderly person, or ward, judged incompetent or incapacitated.

In Canada, government officials in the largest province, Ontario, are studying possible reforms because of growing concern about abuse and exploitation of the aged. In Sweden, lawmakers are considering the elimination of legal guardianships altogether in favor of less restrictive arrangements.

In 1986, the British government responded to pressure from groups for the aged by introducing a system called "enduring power of attorney" under which a person who is still competent chooses someone else to look after affairs in the event of senility. The court system had approved 350 such applications by the end of last year.

Unlike the United States, where guardianship laws differ not only from state to state but also from county to county, countries such as France, Sweden, Japan and Britain have national legislation governing guardianships.

Canada's laws vary from province to province but tend to mirror legislation in Ontario, which has 36 percent of the country's population. The attorney general's office there has established a committee to study possible reforms, such as creation of a Public Guardian's office to investigate alleged abuse or exploitation of the elderly.

The provincial Public Trustee's Office manages the financial affairs of 17,000 people, including 6,000 older than 65, who've been deemed "financially incompetent" by a physician, said Trustee Official Lou Goldstein. Every six months, individuals have the right to challenge the determination before a government-appointed review board.

"The number of successful (appeals) is not large," Goldstein said.

In Sweden, both a physician and a psychiatrist must examine proposed wards and determine if they are unable to care for themselves or their property before they can be placed under guardianship in Sweden. Once placed under guardianship, elderly Swedes lose the rights to vote, marry and make other basic life decisions.

Elderly wards relinquish far fewer rights if they are placed under the care of custodians, who manage only their financial matters. And a proposal under consideration by committees in Parliament would replace legal guardianships with trusteeships that would tailor arrangements to meet the elderly or ill individuals' specific needs while retaining their right to vote, said Assistant Justice of Appeal Bo Blomquist at the Ministry of Justice.

An estimated 15,000 people are under guardianship in Sweden, including the ill and the elderly, Blomquist said. Guardian committees in each county oversee the cases, monitoring the guardians' annual reports and considering their requests to take certain actions on their wards' behalf.

Court-appointed guardians or custodians in Sweden are required to be "honest and wise," and most often are family members; in France, it is becoming increasingly common for the courts to appoint an independent person or group for the job.

French guardianship law, revised in 1968, provides for levels of care and autonomy for the elderly based on specific needs. Guardianships are reexamined if the wards or their relatives appeal the decision or later ask that the guardianships be ended. Judges who specialize in guardianships carefully monitor the process and determine the limits of the arrangement.

"We see that sometimes the guardian has a somewhat authoritarian conception of his duties, considers (the elderly ward) as a child," said Judge Francois Rachou, an expert on the guardianship law. "It is always the judge who must oversee the respecting of the rights of (the ward.)"

Guardians must provide the court with annual accountings of their wards finances, including income and expenditures, and there are civil penalties if a problem is suspected and proven.

Criminal penalties—up to two years in prison—face Soviet citizens who abuse guardianship arrangements. Soviet law also makes it a crime punishable by up to a year in prison for adults to fail to care for their incompetent parents.

State medical and psychological examinations are required to determine if someone is mentally incompetent in the Soviet Union, and a civil court procedure allows friends or relatives to place the incompetent under guardianship and assume control of his or her financial affairs.

No statistics exist for the number of elderly wards in the Soviet Union, but in Japan, an estimated 600,000 senior citizens are dependent on others in daily life. A recent government study predicted the number of senile elderly would triple in the next 30 years.

A family member or prosecutor can apply to Japan's family courts to have an individual declared incompetent and have a guardian appointed. In Britain, they apply to the Court of Protection.

If medical evidence is convincing, the British court will appoint a receiver to handle the person's estate and needs. The receiver is required to make annual reports to the court, more often if the court requests them. Individuals judged incompetent in Britain retain their basic civil rights, such as the right to vote.

The Lord Chancellor's Department said that at the end of 1986, the Court of Protection had 26,769 people under incompetency orders, and more than 70 percent were 65 or older.

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PART III: LACK OF SAFEGUARDS LEAVES ELDERLY AT RISK

EDITOR'S NOTE.—Once established, guardianships for the elderly have few safeguards, an Associated Press study found. What protections state laws offer are usually ignored by overworked judges. And the infrequent checks focus on the ward's money, not the person. The third story, in a six-day series, "Guardians of the Elderly: An Ailing System," examines what happens after a guardianship is opened.

(By Fred Bayles and Scott McCartney, Associated Press Writers)

GREELEY, KAN.—Minnie Monoff had a guardian, a court-appointed attorney and a judge who were supposed to look out for her, protect her. But to her, it seemed no one would listen.

She recovered from a stroke and returned to her home. She wanted control of her life, she said, but her guardian wouldn't give it to her.

Instead, she said, the friend who'd been named her guardian got an emergency order from the court and had her sedated by a nurse, carried from her home by the county sheriff and placed in a nursing home.

Her court-appointed attorney waived a hearing on the order without talking with Mrs. Monoff, in part because of concern about her health in the hot summer weather.

"You don't know what a sick feeling I had to leave my home where I was happy and taking care of myself," the 82-year-old woman said.

"It's rotten. It's no good," she said of her guardianship.

Five weeks of Mrs. Monoff's pleas eventually overturned the guardianship. What began as a plan to protect her affairs while she recovered from the stroke ended up a nightmare.

Mrs. Monoff's case, while rare, poignantly shows how courts, charged with overseeing guardianship cases, can ignore their wards. The result can be costly to the elderly, both in terms of their money and their lives.

A year-long Associated Press investigation into probate courts' handling of guardianships of the elderly found systems that have lapsed into paper-shuffling routines with few protections and, with alarming frequency, where life savings are exposed to mishandling, abuse and theft.

The few safeguards sometimes fail or are ignored by the courts, who routinely take the word of guardians and attorneys without independent checking or full hearings.

The result leaves the 300,000 to 400,000 people supposedly protected by a guardianships with little protection at all.

"We're going to have to change our court system and be watchdogs over these judges and lawyers," an angry Mrs. Monoff says now.

A survey of more than 2,200 cases chosen randomly from courts in 50 states indicated that 48 percent of the guardians were delinquent in annual reports detailing

how they spent their wards' money—a violation of the law. Without the annual accountings, the courts are blind to theft or negligence.

Even rarer are reports on the health and well-being of wards—they showed up in only 16 percent of the files.

And few states have systems to check up on the guardians. Only California has a mandated system of state-funded court investigators who periodically visit the wards; separate court examiners audit how the wards' money is spent.

Through checks of court files and extensive interviews in all 50 states, the AP encountered numerous examples of what can happen when courts don't keep track of the wards and their money:

A Chicago social worker discovered an 83-year-old woman lying in a urine-soaked bed suffering from severe malnutrition and dehydration in 1985. The woman, under guardianship of her daughter, was cared for by grandchildren who, the social worker said, fed her once a day, called her "Fido" and spent her Social Security checks. Despite their denials, the grandchildren "failed in their duty," a judge ruled and placed the woman with the public guardian.

A Pittsburgh accountant, guardian for an 82-year-old ward, spent $156,202 of her $161,968 estate in 22 months. Among the expenses were a $24,175 guardianship fee and a $20,000 commission for investing $45,000 of her money on his own business venture. The court this year ordered $123,000 repaid to the estate.

A Cincinnati man lost $7,000 after two years of guardianship, including $3,500 in missing payroll checks and two bars of silver allegedly taken from a safety deposit box. The guardian bond, required by the court to insure the ward's assets, had been forged. The guardianship was dismissed in 1985.

Judges and court clerks in many places acknowledge they have little control.

"We don't have many resources. Once in a while I'll yank one (a case file) and audit it," said Chris Tountas, a Phoenix, Ariz., probate court commissioner who receives information on 60 guardianships a day but audits only 12 cases a year.

"Does the court open files and look? I don't think that happens unless a problem is brought to the attention of the court by a family member or creditor," said Michael J. Carbo, a former probate court master in Fort Lauderdale, Fla.

While most guardianships are properly administered, 13 percent of the more than 2,200 files examined by AP reporters contained no reports or accountings—not a single document filed after the granting of the guardianship.

Court clerks, the busy keepers of the county records, often were at a loss to explain what had happened to the ward, the guardian and the estate, or the money. Indeed, in many of the counties examined by the AP, court officials acknowledged they had no idea how many guardianship cases they were responsible for.

"There are only two of us here. We don't have time for all that," a Collier County, Fla., clerk said.

In Ada County, Idaho, a clerk joined an AP reporter to look at files. They pulled 12 cases that contained nothing but the orders granting the guardianship. In each case, the clerk determined that the ward had died, yet those guardianships had never been closed and the final accountings never made, as required.

Spokane County in Washington uses interns to check guardianship files. But of 13 files picked at random in the courthouse, nine were either missing financial reports or should have been closed because the wards were dead.

"That's surprising to me," said Robert Austin, the Spokane County Superior Court commissioner. "It sounds like they are not looking at the files very carefully or very often."

One upstate New York file opened in 1980 and involving an estate valued at $150,000 six years into the guardianship contained this notation: "This file made up 11-20-86—original file seems to be missing." Among the missing material was information on the sale of the ward's property and the initial size of the estate.

In 1982, a special grand jury in Miami found a 92-year-old woman without relatives or friends who was living "in squalor in an adult congregate living facility since closed for its intolerable living conditions."

The woman had a bank account of $150,000, and her guardian was the owner of the adult home, in violation of Florida law, the grand jury said in its report. The guardian hadn't filed a report on the ward for two years.

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"The thing that scares the hell out of me," said Frank Repensek, executive director of The Guardianship Program of Dade County, a Miami, Fla., non-profit group, "is that people are acting as guardian without any kind of supervision."

Said Linda Weeks, a guardianship expert of the Florida Bar Association Disability Committee: "There's the way it should be, and there's the way it is . . . the way you can get away with."

AP reporters found cases of questionable spending, usually approved by judges who routinely sign guardianship papers crossing their desk without audit or investigation.

Most statutes require that the money in a ward's estate be spent for the benefit of the ward. Yet the guardian of a Kansas World War I veteran, for example, ran through $112,000 in a little more than a year, paying for a car and car repairs for a relative, spending $1,800 on a hotel stay in San Francisco and loaning $2,000 to a relative who built kitchen cabinets.

The Veterans Administration challenged that case, and after a judge investigated, the guardian was removed in 1981 and the man restored to competency. The money was never repaid.

Payments to car dealers were found in files in South Carolina and Texas, even though wards are stripped of driving privileges. Vacations for guardians were paid for by wards' estates in several files, and guardians at times made gifts to themselves of wards' money.

Some observers said more guardians are justifying gifts and lavish spending because they will likely inherit the money anyway. Some files even include notes from guardians justifying some spending as a way to avoid inheritance taxes. More than 4 percent of the files studied included gifts.

"We haven't been able to convince them (judges) that some of these dear sons and daughters don't have the best interests of their old gray-haired mothers and fathers at heart," said Jim West, a legal aide attorney in Oklahoma who specializes in elderly law.

Some judges contend cases of abuse and neglect are isolated, that the system runs well except for a few bad apples. Some, like Denver Probate Judge Field Benton, say budget restraints limit how much oversight a court can provide.

"We only require (financial) reports on guardianship cases, and I'm scared about that. That's not to denigrate (the importance of) a person's living condition, but I've got to choose," Benton said.

In Pennsylvania, where the presumption of good faith is woven so tightly into the system that even annual financial accountings are optional, the counsel for the Legislature's Joint State Government Commission challenges the idea of formal safeguards.

"Even with the scoundrels, the system works remarkably well," said William Nast. "We wouldn't want to see that changed. If you had a guardian guarding the guardian, who's going to guard the guardian guarding the guardian?"

Yet others question how, if so many cases get so little supervision, judges have any idea of what's going on with their wards.

"I think it needs closer monitoring—even our guardians feel that way," said Cathy Kimbrel, elderly services administrator in Fort Lauderdale, Fla., and organizer of a volunteer guardianship program.

California's tough system of court investigators has caught conservators using estate money to start businesses and pay for personal car insurance, and even physically abusing elderly wards.

"I shudder to think what we'd do without them," Fresno County Superior Court Judge Eugene W. Krum said of the investigators.

Court officials point to the requirement that guardians be bonded as a safeguard against theft or misuse of a ward's money. Still, the AP found that in 31 percent of the cases the bond premium came from the ward's estate.

The bonds themselves seem to offer little insurance against wrongdoing.

Dan Kirby, corporate counsel for Western Surety Co., a Sioux Falls, S.D., firm that has written 6.5 million guardianship bonds in the last three years, said his firm has a 20 percent loss rate on such bonds.

"Our industry has found in recent years all guardians are having more trouble keeping their hands off the money of the people they are supposed to protect," he said.

Kirby said attempts to recover missing money are usually futile.

"We either can't find the guardian or, when we do, they are borke," he said.

For Minnie Monoff, now back home raising chickens in Greeley, receiving Meals on Wheels and visits from friends and neighbors, the feeling of being locked in by a system that wouldn't listen to her was terrifying.

The court order removing her from her home was signed only a few hours before the judge received a letter from her sisters opposing the guardianship. Her pleas to

be restored to competency and released from the guardianship were ignored until a elderly affairs worker questioned her confinement.

"Like a criminal—that's the way they treated me, and that's the way I felt," she said. "I don't trust these courts. . . . How can one person help yourself when you get a gang like that against you?"

Lydia Cunningham, the friend who became her guardian, said she filed the emergency petition to place Mrs. Monoff in a nursing home because her ward locked herself in her house and refused to come out. Mrs. Monoff said she did that because of her anger at Mrs. Cunnigham over the guardianship.

"I'll never help anybody again," said Mrs. Cunningham. "I've helped other people, too, but I don't do nothing no more. That's the last time, and it will stay the last time."

The court-appointed lawyer, Herman Loepp, the part-time Anderson County attorney, said he believed Mrs. Cunningham's petition and, considering the drought and heat of the 1984 summer, saw no need to talk with Mrs. Monoff.

"I tried to do what was best for the person," Loepp said. "Is it better to be out there in 100-degree days? You don't know how well the person is taking care of herself, and you've got this verified petition that she's not."

Mrs. Monoff's case, Loepp said, "just won't die. You try to do what you think is right, and the lady that you tried your best to help thinks you tried to stab her in the back. All I can say is I never tried to do that. I tried to represent her the best that I could and I still think I did her a hell of a job."

To Mrs. Monoff, the ease with which she was confined to a nursing home raises a frightening warning to other senior citizens.

"There's not many able to fight like me. A lot of people would just take it and say, 'Well, I can't do anything about it,' " she said. "I wouldn't want anybody to go through what I went through."

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CALIFORNIA COURT INVESTIGATORS: BACKBONE OF THE CONSERVATORSHIP SYSTEM

(By Laura Castaneda and George Garties, Associated Press Writers)

SAN FRANCISCO.—In San Bernardino, a woman was removed as conservator for her mother after she allegedly used most of a $55,000 estate to start her own travel business, which failed.

In San Francisco, the petition of a man who sought to become conservator for his mother was denied after testimony that he beat his aunt and his mother with newspapers.

Both cases were uncovered by court investigators, men and women whose expertise ranges from psychology to gerontology; some were even trained as ministers. Mandated by the state in 1977 and unique to California, they are the backbone of the state's conservatorship system.

"I shudder to think what we'd do without them," said Fresno County Superior Court Judge Eugene W. Krum.

With a conservatorship, court-appointed legal guardians decide how their wards' money should be handled, where they will live and even how doctors will treat them.

Court investigators act as the eyes and ears of the judge, visiting all proposed wards who will not appear in court and advising them of their legal rights, checking on all wards periodically and investigating allegations of fraud and abuse.

Each estate is charged for every investigation, with this year's fees set at $154, but the fees are collected only when the conservatorship ends. If the estate has been depleted, no fee is collected.

There are about 115 investigators in the state's 58 counties, and the most recent figures available show 22,665 investigations were conducted in fiscal year 1984-85.

The mere existence of the office probably serves as a deterrent to the more blatant abuse and stealing found in some states. But because each county runs its own program, there are wide variations in the amount of time spent on each investigtion and the quality of reports produced.

And that can lead to inconsistencies slipping by court investigators for years before detection. In San Diego, for example, attorney Robert Kronemyer was convicted of grand theft and perjury for taking money from a ward's estate. Discrepancies in several annual accountings were not detected until after the ward's death.

One year after a conservatorship has been established, and every two years thereafter, a review is required to assess whether the ward's rights are being protected and if the conservatorship is still needed.

Spot checks by the AP of 70 case files found none in which that requirement was not met.

Effective last January, court investigators were given another responsibility that could significantly boost their caseloads. Unless waived by the judge, they are required to investigate guardianships, or conservatorships involving minors.

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GUARDIANSHIPS TODAY HAVE MUCH IN COMMON WITH MEDIEVAL LAWS

(By Lawrence Kilman, Associated Press Writer)

DOVER, DEL.—Mary King, 21 years old, owner of 250 acres of land, was accused of being a lunatic.

Her story, spelled out on yellow, ancient parchment, has been repeated countless times. The papers say Mary King "hath been so far deprived of her reason and understanding that she is thereby rendered altogether unfit and unacceptable by reason of her lunacy to govern herself or her estate."

Today, she is history. Her "Commission of Lunacy" papers are buried in dusty boxes in the state archives here. But the process by which she was accused and the court that declared her a lunatic live today.

The accuser was her brother, Henry King, who went to Delaware's Chancery Court to argue that his sister was incompetent. He asked to manage her estate.

The date was June 16, 1802. The U.S. Constitution was 15 years old. Thomas Jefferson was president. And in Delaware, the first state to ratify the Constitution, one of the country's earliest cases of guardianship was unfolding.

The language and some procedures are different, but the case has much in common with modern guardianship proceedings.

In Mary King's case, Sheriff Kendal Batson chose "12 good and lawful men" who met at Henry King's house in North West Fork for an "inquisition." Two neighbors testified that Mary King had been acting crazy for about three years.

The jury agreed, and Henry King was put in charge of his sister's estate. Forever after, the court referred to the woman as "Mary King the Lunatic."

Today, terms such as "idiot" and "lunatic" have been replaced by "incompetent" and "infirm" in guardianship laws; a judge, not a jury, decides such cases, and doctors' affidavits replaced the testimony of neighbors.

But if Henry were able to petition the court today, he would do it in much the same way he did 185 years ago.

In fact, the roots of modern guardianship law go back to medieval England. In fuedal times, when landholders were forced to make payments to the king, a mechanism was needed to keep the money flowing if the landholder went mad. Someone was appointed to manage the property, and guardianships were born.

"It had an economic motive, not for the benefit of the ward, but for someone else," said John J. Regan, a professor at Hofstra Law School in Hempstead, N.Y., and an expert on guardianship history.

When feudal times ended, and money no longer went to the king, the role of guardians changed. They continued to manage the affairs of "lunatics," but only so those persons would not be victimized by others.

"An element of benevolence was introduced," said Regan. "The guardianship was administered through the Chancery Court, the so-called conscience of the king, who looked out for the disabled of society. That function is carried over in American common law and into the courts."

Maurice Hartnett III, a vice chancellor in the very court system that declared Mary King a lunatic 185 years ago, had an ancestor that suffered the same fate.

"What I was told was that he had a stroke in 1870 and couldn't speak," said Hartnett. "Having him declared a lunatic was the only way to have someone take hold of his property. He was in business and had a lot of land. He was a fairly wealthy person. So, forever, the records of the court show this man was declared a lunatic when all he had was a stroke."

It was the wealth of Hartnett's ancestor that made a "Commission of Lunacy" proceeding necessary, and the notion of money has always been a motivating factor behind guardianship laws.

"The one critical factor to get a guardian in olden days, there had to be assets," said Regan. "If there wasn't any assets, nobody cared."

Today, guardianship law is more benevolent, but most guardianships are still formed to protect the wealth of the incompetent person.

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COMPUTER DATABASE ANALYZED GUARDIAN FILES

(By Fred Bayles and Scott McCartney, Associated Press Writers)

Standardized reports on more than 2,200 court cases from across the country dating back to 1980 were analyzed by a computer database developed by The Associated Press for its study of guardianship of the elderly.

The research yielded a portrait of the nation's elderly wards and guardians, as well as court procedures.

Here is a sampling of the results.

The average age of the wards was 79. About 67 percent were female, 35 percent lived in their own home before guardianship, 33 percent were moved during guardianship and 64 percent were placed in nursing homes at some point as a ward.

About 87 percent were given some sort of notice about the impending guardianship, but 44 percent went through the court process without legal representation.

About three-quarters had hearings; only 8 percent of the files indicated the elderly person attended the hearing. Judges approved 97 percent of the petitions.

Sixty-six percent of the cases had statements from at least one doctor; 34 percent were approved without any doctor's opinion.

When causes of incompetence were listed, the leading reasons were:

19 percent inability to care for self or finances.

16 percent senility or dementia.

11 percent organic or chronic brain syndrome.

8 percent old age or advanced age.

8 percent mental illness.

6 percent stroke.

2 percent Alzheimer's disease.

1 percent forgetfulness.

1 percent alcoholism.

Only 16 percent of the files contained reports on the condition of wards after guardianships were granted. In 48 percent of the files, annual accountings of money were missing.

Two-thirds of the guardians had to post bonds, but bond premiums were charged to the wards' estates in almost one-third of the cases.

The wards entered the system with an average estate value of $97,551. By the time the guardianships ended, after 3.4 years after being opened, an average of $12,000 had been spent from the estate. In those files where the guardians had indicated they had been paid for their services, the average annual fee was $1,224.

Four percent of the files showed gifts paid for by the estate; 11 percent of the estates were depleted during guardianship.

Forty-five percent of the files were formally closed, usually because of the death of the ward. Thirteen percent had nothing in the file but the opening of the x guardianship.

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PART IV: PUBLIC GUARDIANS STRUGGLE TO KEEP PACE

EDITOR'S NOTE.—Middle class or poor, they are alone and may need a guardian. Who will help? States have answered with a relatively new idea: the public guardian. The fourth part of a six-day series, "Guardians of the Elderly: An Ailing System," explores how these government officials cope.

(By Fred Bayles and Scott McCartney, Associated Press Writers)

LOS ANGELES.—Five social workers in the public guardian's office here control the lives of 1,000 elderly people. The office also controls $200 million in assets and has run a hardware store, a plant nursery and an oil drilling operation owned by its wards.

It is the largest and one of the oldest public guardianship offices in the country, and its critics say it now turns away cases and favors monied wards over the indigent.

Both criticisms are true to some extent, the public guardian says. His office is swamped, and his budget is constantly under threat.

"We don't want any more. We have too many," said Gordon Treherne, the Los Angeles public guardian. "Everyone thinks we should expand and we're not. We're retrenching."

And it's happening all across the country.

Faced with a crush of elderly who either outlive their money or live far from family, states are setting up—and loading up—public guardians as a catchall for those who have no one else.

While numbers remain unclear, an Associated Press study of more than 2,200 guardianship cases around the country shows that 2.3 percent of the 300,000 to 400,000 people under guardianship may be wards of public guardians.

The public guardians take direct control of the lives of old people and make the decisions any guardian makes—where the ward will live, whether to pull the plug on life-support systems, how much money is spent on groceries.

"Public guardianship is brand-new by government definition," said James Scannell, the public guardian in San Francisco. "We're in our infancy. We're really just evolving now to meet the needs of the community."

Meeting those needs is becoming increasingly difficult. In Phoenix, caseworkers have time to visit their wards only four times a year. Tennessee's new public guardian's office took in 37 people in the first two months and expects to reach 300 in the first year.

Thirty-two states have some form of public guardianship, and almost all are finding big problems that are getting worse.

Some public guardians have been indicted, others criticized for neglecting wards or "warehousing" them in nursing homes.

In California, a grand jury blamed the Santa Clara County public guardian's office for the 1985 starvation death of 79-year-old John Nagle. The office hadn't seen the ward in two years. The grand jury's report helped establish new guidelines for the office.

The public guardian for Du Page County, Ill., pleaded guilty to charges of official misconduct and theft last year after he was accused of investing wards' money for his own benefit. He was ordered to repay $12,600.

John M. Hartman, a former, Bay County, Mich., public guardian, admitted in 1985 that he embezzled $129,506 from some of his 75 wards. He was sentenced to five years in prison.

Las Vegas' public guardian, Jared Shafer, has drawn fire for making real estate investments with partners in the law firm he chose to handle most of his office's business.

In North Dakota, wards are placed in the hands of part-time public administrators, appointed officials with no training, staff or money to care for their charges. In one case, a public administrator put two wards in the care of a friend who charged each estate $2,000 a month for room and board.

"When you don't have the appropriate staff, you get into these binds," said Verdine Dunham, president of the California Association of Public Administrators. "Sometimes I wake up in the middle of the night . . . (worried) that I haven't done something that will come back to haunt me."

Added Phoenix public guardian Dean Trebesch: "There's more realization now that the power that goes with guardianship is so awesome and the loss of rights so awesome that we'd better make darn sure we do it right."

While some social service professionals hail the care and services provided by public guardians, other experts point to the problems of handling so many with so few.

In Phoenix, for example, so many are now under the umbrella of the public guardian that caseworkers handle 75 wards apiece. San Francisco has 315 wards and two caseworkers. Alameda County, Calif., which includes the city of Oakland, has frozen its caseload at 450 with just three caseworkers. Alaska's six public guardians handle 280 cases. Four guardianship officers in Kentucky have an average case load of 150 each.

In Portland, Ore., five people handle 180 wards with a $180,000 annual budget. "We're stretched thin," said Jeff Brandon, deputy public guardian. "There's probably 500 cases that are not even sent here, because they figure they'll get a 'no' from us."

In Los Angeles, the case load breaks down to more than 200 wards per worker.

"The reality is with those case loads we're not getting out there very often," Treharne said.

Few guidelines exist for running public guardianship offices, but some experts have suggested limits.

"The public guardian must be adequately staffed and funded to the extent that no office is responsible for more than 500 wards, and each professional in the office is

responsible for no more than 30 wards," said Winsor Schmidt, a guardianship expert and law professor at Memphis State University.

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In its year-long investigation into guardianship of the elderly, the AP found the push to public guardianship is due in part to a lack of private guardians, including family members, willing to take on non-paying or low-paying cases.

Needing someone to authorize medical procedures, guarantee payment, sign hospital discharge papers, pay monthly bills or even recover money lost to swindlers, many agencies and social workers are looking for a place to turn.

One survey obtained by the AP in Massachusetts, where there is no public guardian, showed that 94 percent of the state's hospitals reported "experiencing guardianship problems with patients, the largest being the lack of potential guardians."

Without a public guardianship program the mentally ill, some of them elderly, who have been declared incompetent have no one to speak for them. In Pennsylvania, it is estimated 5,000 to 6,000 mentally ill people have been declared incompetent since 1979, and half have been released from institutions.

"It's a mess. These people are in no-man's land. No one is protecting them," said Edward Carey, a member of the Pennsylvania bar association's subcommittee on the elderly and infirmed.

Yet some oppose the idea of public guardianship.

Lawrence Frolik, a law professor at the University of Pittsburgh, sees it as another layer of bureaucracy. "The last thing you want is a state office whose existence depends upon taking away the rights of others," Frolik said.

Terry Roth, a consultant to the Pennsylvania Association of Retarded Citizens, fears a return to institutionalization of the mentally ill.

"As soon as you create a public guardianship, you're going to have someone filing against every bag lady out there," he said.

In some places that do have public guardianship, officials have begun cutting budgets, asking the public guardians to become more self-sufficient through fees charged to the wards' accounts.

In Los Angeles, income from fees was supplemented last year with $2.5 million from county tax coffers for a total budget of $9 million. This year the county commissioners cut that $2.5 million to less than $1 million.

In the last nine years, county support has fallen from 67 percent of Treharne's budget to less than 15 percent. About 85 percent of Treharne's cases are indigent.

"We do want some big cases (large estates to which fees could be charged) ourselves, but we don't hustle them," he said.

Treharne's office has been criticized by a public interest group claiming too many people have been moved out of their homes and routed to institutions. Of 1,000 elderly wards (the office is responsible for 2,200 people, half of them mentally ill), only 50 are maintained in their homes.

Florida, which has a huge elderly population, only this year launched pilot public guardianship programs in two counties.

Ten years ago a count by Florida's Office of Aging and Adult Services found that 2,700 people, 63 percent of them older than 60, needed guardians. About 1,000 of them had already been found incompetent in court. Today the figure is believed to have doubled.

The three-person operation in Fort Lauderdale will fill its 40 spaces by October, its 10th month of operation, public guardian Lisa Goldstein said.

"It took 10 years of resistance and I still get told all the time, "We don't need you,'" Ms. Goldstein said. "If we don't get an increase in staff we will not be able to accept people. To me, it would be a crime if the state opened the floodgates and closed them without fully realizing the potential of the problem."

Public guardians agree that as the population ages, as people live longer and as hospitals and nursing homes require more guardianships, there will be even greater strains on public guardians.

"I think we provide a needed service," said Shafer, the Las Vegas public guardian. "But as our senior population grows, it's gonna get worse."

In San Francisco, the public guardian has begun diverting people from guardianship by establishing payment programs and arranging for sales contracts that allow the elderly to remain in their homes until death.

Said Scannell, "Alternatives to conservatorship (guardianship) is really where the emphasis should be."

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ELDERLY CON VICTIM: "I DIDN'T KNOW AN OLDER PERSON NEEDED PROTECTION"

(By Dan Day, Associated Press Writer)

OMAHA, NEB.—Homer Kamar sat on a dinette chair in his tidy high-rise apartment and said he was living in paradise.

Kamar, an 80-year-old retired Army medic, used to live in tattered clothes in a cluttered trailer home where no one cared for him but himself—not very well, by his own admission.

"I hadn't changed the bed sheets in over six months and the toilet froze up," Kamar said.

"I didn't know an older person needed protection from anything."

But Kamar did need protection—from a con scheme that drained $14,000 from his bank account on a single day in 1983.

He didn't want to discuss the details but said he was bilked by two men who showed up at his door, took him to his bank, persuaded him to make two $7,000 withdrawals, then vanished.

He never saw the money again.

"I was a simpleton," Kamar said ruefully. "I didn't know anything about economic robbery."

Kamar went to the police, who couldn't find the thieves. The police referred his case to a social services agency, which then contacted Volunteers Intervening for Equity, an organization of senior citizens who volunteer to help others.

Through VIE, Kamar met G.D. "Jerry" Kaufman, the man he now jokingly but affectionately calls "father."

"Out of the shadows, out of the darkness, he all of a sudden appeared," Kamar said with a grin as he pointed to Kaufman, a 67-year-old former Union Pacific Railroad manager who is Kamar's court-appointed conservator.

Kaufman is one of 25 VIE volunteers who are conservators for 46 elderly people in Omaha. The conservators, appointed to oversee the protected individuals' money, are trained in the requirements of state law.

Executive Director Sandra Gaube said VIE does not seek out cases but only acts on referrals, most from the Eastern Nebraska Office on Aging, the Nebraska Department of Social Services and nursing homes.

VIE will only take on cases in which the person to be protected agrees to the conservatorship.

"Most cases are generally low-income people who have had a lot of difficulty handling their finances or have had a lot of health problems," she said. "It's such a relief for them not to have to worry about paying their bills. They know it's being taken care of."

At his apartment, Kamar cares for a small spider plant he's put on a bedside table. There's a kitchen off the living room where he cooks some of his meals. A stereo phonograph sits in a corner of the living room, where he watches television on a recliner. The dinette table is covered with a bright red-and-white checked tablecloth.

A housekeeper cleans Kamar's apartment regularly, and Kaufman said he talks to Kamar by phone at least once a week and sees him often.

"The benefits you get out of it are really tremendous," Kaufman said. "You develop kind of an attachment."

Kamar can't forget the change in his life.

"I began to feel almost human when I got furniture," he said. "I didn't have those garage rags for sheets anymore. I thought I'd gone to heaven. I'd never known such happiness."

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INSTITUTIONALIZED WOMAN ON HER OWN AFTER HALF-CENTURY

(By Wendy Mitman, Associated Press Writer)

CONCORD, N.H.—When she was very young, Claire tried to run away from the State institution where she was abandoned as a blind, deaf and mentally retarded child. More than 50 years later, she has finally escaped.

She can come and go as she pleases and, with murky blue-green eyes that now can see, she decorates her own apartment with sky-blue curtains and watches the stars at night.

Her restored vision and life on her own are the gifts of a guardian and care-givers who took her to an eye doctor and realized Claire had never needed to call an institution home.

Claire, who did not want her real name published, spent more than half a century in the Laconia State School. Deaf, legally blind, unable to communicate clearly with her family or those around her, she was committed after her family split up.

"Society at that time dictated to families with children who were very handicapped that they were appropriately abandoned in institutions," said Stephanie Krenn, Claire's guardian with the state Office of Public Guardian.

Krenn doubts that Claire ever was retarded, but her inability to communicate pigeonholed her.

Claire, who doesn't know her actual age but is in her 60s, doesn't like dwelling on her past, but when she does talk about it, signing through an interpreter, her hands move quickly as unpleasant memories spill from her.

"I was at school since I was small," Claire signed. "I lived at Laconia school when I was very little and I hated it. I even ran away, a long time ago. . . . Security had to look for me. I took a boat and I untied the rope . . . I rowed out in the boat. They couldn't find me. I was crying. And I was almost blind—I couldn't see."

Claire's life began to change before she knew it when the state Supreme Court ruled in 1979 that New Hampshire had to provide guardians for residents at state institutions. In 1982, Claire became a ward of the Office of Public Guardian.

Her first freedom from the state school came when she moved to a group home in 1983, part of a deinstitutionalization initiative.

A second profound change was in the offing. Shortly after the guardianship began, Krenn and Claire's caseworkers took her to an opthalmologist who determined that cataract surgery and cornea implants might restore her sight.

Part of the procedure was experimental and Krenn needed the court's approval. The judge and lawyers used an interpreter to explain the surgery.

"She was scared, but she wanted to do it," Krenn said. A day after the operation on the first eye in 1984, "she was able to look at one of her care providers and say, 'Your sweater is blue!' It was wonderful."

"I can see everything now," Claire said. "I can see much better."

The next step was leaving the group home, where, Krenn said, Claire was out of place and more dependent than necessary.

"Her true peer group is not the retarded and it never has been. Her true peer group is deaf people," Krenn said.

In May, Claire moved into an apartment. In her willful way, she declined to have anyone stay with her the first night, Krenn said.

Her walls are adorned with framed jigsaw puzzles of animals and the cover of a Boston Globe Magazine showing a woman signing. Her bird chirps in its cage in her bedroom. The place is spotless—Claire cleans and cooks for herself.

A ringing doorbell or telephone sets off strobe lights. The phone is specially adapted to let Claire send and receive typed messages.

Her television can pick up programs captioned for the deaf.

She enjoys visiting friends, shopping, picnicking and swimming.

"I've been to the mountains and I like to see the stars, see them all white when I look in the sky," Claire said.

Medicaid, Medicare and the state help Claire pay for her apartment and the caseworkers who assist her in making the transition to living alone.

Although convinced Claire needed a guardian to help her get the services she deserved, Krenn believes Claire now can make everyday decisions.

"Do I think that now, since she's settled . . . it's time to petition to return those responsibilities and freedoms to her?" Krenn asked. "Yes, I do."

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Veterans Administration Watches Over 124,000 Wards

(By George Esper, AP Special Correspondent)

Fall River, Mass.—He is a pathetic man, a Vietnam war hero who stood in the line of fire to save his buddies more than 20 years ago and came home unable to distinguish between his Army commendation medal and the G.I. Joe military toys he spends his money on today.

At age 44, he has been a recluse in his mother's home, only recently beginning to venture outside his room. She has taken of him for 21 years even though he sometimes threatens her when he has flashbacks of the Viet Cong. She has been keeping his medal because he would throw it away.

He is one of the Veterans Administration's 124,000 wards, the incompetent, the physically disabled, the frightened and the forgotten, the shells of what they once were, controlled by medication that keeps them calm. Some have stayed in mental hospitals for up to 20 years, others live in small rooms or nursing homes. Some have estates in the six figures.

The VA has no judicial powers. But it serves as a watchdog for the state courts to ensure that benefits to incompetent and disabled veterans and their dependents are used for their welfare and that their legal custodians, just a step below guardians, do not take advantage of them. About 60 percent of the VA wards are veterans, the rest are their widows and children.

"The state court system can enact penalties against a fiduciary for mishandling funds. The VA cannot do that," said William Saliski, who helps run the VA's benefits program in Washington. "Most State courts do not have the capabilities to continually monitor the management of an incompetent's estate. That's what we do."

To do this, an army of 260 VA field examiners is on the road five days a week visiting the wards and their custodians. They look at the conditions of the homes in which they live, investigate whether they are fed and clothed properly and check that they are given enough spending money for what they can handle.

Back in the regional offices, 110 auditors called estate analysts make sure that custodians and guardians who are required to do so file annual financial statements. Then the auditors go through them looking at each expenditure. Once the VA approves an accounting, the probate court generally follows suit.

Field examiners are required to make an initial visit, then a second one within a year. After that, they are required to visit wards within every five years depending on the amount of benefits they receive and other circumstances. But the field examiners usually don't wait that long.

One of them, Bill Gaudreau, a 52-year-old white-haired attorney who works out of the Providence, R.I., regional office covering southeastern Massachusetts, has logged nearly a half-million miles in 17 years on the job. Gaudreau says he generally sees his wards every 2 to 3 years.

One day recently he stopped by the Vietnam war hero's house, accompanied by a reporter who was permitted to go along on the condition the veteran's name not be used. The veteran had just returned from the store with a can of motor oil even though he doesn't have a car.

"Why are you buying motor oil?" Gaudreau asked him, wanting to know how he was handling his spending money.

"I don't need it," the veteran yelled.

"Do you receive spending money?"

"Five dollars (a day)."

"What do you do with it?"

"I . . . buy soda and cigarettes."

"Any objection to your mother handling your benefits?"

"My mother should handle them because my father ain't here anymore."

The veteran has a 100 percent service connected disability and receives the maximum benefit of $1,355 which is paid to his mother, his custodian.

Gaudreau questioned his mother about how this money is spent, about his medication and what he does all day. He asked her about an expenditure of more than $500 for new furniture, some of which he accidentally burned with his cigarettes. His mother said he spends $400 a month on cigarettes, usually takes a few puffs and puts them out.

"Do you have a savings account for him?" Gaudreau asked the mother. "May I see the account?"

The mother has saved more than $20,000 for him.

"My son will be taken care of it something happens to me," she said.

"Guardianship is the last approach we take," Gaudreau said after the visit in explaining why the mother was designated legal custodian, which does not require court approval. "Some people consider it a stigma. We prefer to take the least cumbersome approach."

Gaudreau files a report that is followed up by a colleague, Rita Allen, whose official title is estate analyst but who is surrogate mother to many veterans.

Mrs. Allen finds her vigilance rewarding. She recalls one veteran telephoning her to say he had lit a candle for her at a shrine.

"That brings tears to your eyes," she said. "That makes you feel like it's all worth it."

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PUBLIC GUARDIAN PATRICK MURPHY: "SCOURGE OF THE BUREAUCRATS"

(By Sharon Cohen, Associated Press Writer)

CHICAGO.—It was the start of Christmas season when attorney Patrick Murphy entered court, trailed by two frail, white-haired old women. They had come there for a simple reason: freedom.

The women were broke, and the state had agreed to pay for a nursing home. But Murphy, their guardian, had said he'd keep the women at their apartments if the state gave him part of what it would pay for nursing home costs.

The state had refused, so Murphy found himself in court. The Cook County public guardian argued the women should be allowed as much freedom as possible.

If not, he warned, "on Christmas Eve, we're going to take them out of their homes and put them in a nursing home. I think the governor and the attorney general should come down in limousines and take them there."

Murphy prevailed. The women remained at home.

This is Murphy's law: an aggressive argument, an emotional appeal, a keen sense of what plays in the press and, inevitably, confrontation with the bureaucrats.

In this 1981 case, Murphy notified the news media in advance, waited until the holidays to go to court and even brought along another elderly ward who had nothing to do with the case, but was a good talker and dazzled reporters. "She was there for the charm" he said.

Murphy's not surprised he got his way. "Politicians and bureaucrats are much more worried about an adverse word in the press than million-dollar lawsuits," he said.

But Murphy has also sued at least a dozen city, county, state or federal agencies, the governor who appointed him and the judge who re-appointed him and made his post full-time this year.

"He's really the scourge of the bureaucrats," said Circuit Judge Joseph Schneider. "He has the capacity to go for the jugular when it's appropriate."

Murphy "utilizes the press to put the spotlight on deficiencies in the system," Schneider added. "It mobilizes the shame and embarrassment of the bureaucrats."

"He's the Illinois Ralph Nader," said former law partner Jerome Goldberg. "None of them (government agencies) like him. He's not really part of the establishment. He's not a person who can be bought off with favoritism or praise."

As public guardian in the nation's largest court system, the 48-year-old Murphy supervises an office of 80 people, including 30 lawyers, social workers, bookkeepers and others repsonsible for managing the affairs of people who need help and cannot care for themselves.

About half of Murphy's job is devoted to neglected, abused or dependent juveniles; the other half is elderly people. The two groups, he said, are very different.

"With juveniles you always have the feeling maybe you can do something," he said. With the elderly, "you're dealing with people on their way out. All you can do is try to make their lives a little more comfortable."

Murphy is responsible for some 300 elderly wards with assets of about $9 million. More than half have family, he said.

The Cook County public guardian's office is legally restricted to handling adults whose assets are $25,000 or more. A state agency handles the others.

Murphy came to his job in 1978 when Gov. James Thompson asked him to investigate the office. Murphy said there were allegations his predecessor was taking property from wards. The governor fired her, but she wasn't indicted.

Since he took over, two of Murphy's employees have been caught stealing from wards. Both were fired and the money was paid back.

Murphy's wards are referrals from police, neighbors, hospitals or social service agencies. Some need help with daily tasks, but for others, such as those in comas, Murphy makes agonizing life-and-death medical decisions.

Still others are victims of scams.

There was the case of the disoriented woman who discovered her husband dead in bed and went to tell neighbors.

The neighbors, a man and woman, got a lawyer to prepare a will for her, signing away her money to them, and the two also got access to her banking account, Murphy said.

"By the time it was all over," he said, "they have all her money (about $90,000). She has none. They locked her in her apartment."

The two testified at a civil trial that the woman agreed to loan them the money and, at the time, she was competent. The elderly woman couldn't testify—she didn't understand the court's request to raise her right hand.

A judge found the two defrauded her. In a separate proceeding, they pleaded guilty to criminal charges, and the money was returned.

Murphy contends the state's attorney's office is reluctant to prosecute these cases. "It's not a real sexy problem," he said, and it's often difficult because the victims are incompetent and, thus, unable to testify.

"(Convicted mass murderer John) Gacy is considered a sexy crime," Murphy added. "My 5-year-old kid could prosecute Gacy."

Murphy recently wrote the governor and legislators, recommending tougher penalties in these cases.

The guardian's job is the latest public service role for the balding and bespectacled Murphy. He has served in the Peace Corps in Somalia, wrote a book on the juvenile justice system and headed a commission that revised the state's mental health code in 1974.

After nearly 10 years on the job, he said, "My opinion of human nature is not very high. . . . We really see the slimy side of life.

"I have a very low opinion of bureaucrats, politicians and lawyers," he said, pausing as if he'd realized he might be including himself, then added, "I have exceptions."

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PART V: GUARDIANSHIP ENTREPRENEURS ENTERING THE FIELD

EDITOR'S NOTE.—State and county governments are not the only ones getting into guardianship. It's becoming a business. The increasing elderly population provides plenty of opportunities for accountants, lawyers and banks to earn money as the guardians of old people. This fifth story in a six-day series, "Guardians of the Elderly: An Ailing System," looks at who is getting into the business and why.

(By Fred Bayles and Scott McCartney, Associated Press Writers)

PHOENIX, ARIZ.—Charles Arnold looks out on the rest of country from this retirement mecca and sees unlimited possibilities for the guardianship business.

"I think guardianship is unquestionably the future," he says. "The business is overwhelming and the need is dramatic."

An attorney and former public guardian in Phoenix, Arnold is part of a new and growing field of guardianship entrepreneurs—professionals who, for a fee, will run the lives of old people.

Called professional guardians or fiduciaries, they take on a role once held by sons and daughters. They earn their money by making all the decisions for their elderly wards, including where they will live and, in some extreme cases, when they will die.

So promising is this field that San Diego Community College has begun night courses on how to be a professional guardian.

Their fees come from the people whose lives they control. No State yet requires a license to hang out a shingle.

The ranks include people such as Frank Repensek, who agonizes over the medical decisions he must make for his wards.

"Substituting judgment for another adult who sits there and says I don't want this operation, it's just miserable," said Repensek, the executive director of the Guardianship Program of Dade County Inc., a non-profit Miami firm.

Others define their role in terms of cost effectiveness, economies of scale and botton lines.

"It is basically money management," said Alan May, a Detroit-area attorney with 400 wards. "It is basically the review of their financial affairs to make sure the nursing homes are charging them the correct amount of money, that the nursing home is paid, that the money is provided for their needs."

While guardianship still is largely seen as a a family affair, a legal step taken by children to better care for their parents, a year-long Associated Press study of the nation's guardianship systems found an increasing number of strangers taking over as the legal "parent" of the elderly.

In more than 2,200 files reviewed by the AP nationwide, about one-quarter of court-appointed guardians were banks, attorneys and businesses who charge for their services.

The investigation also detailed instances where private guardians have proven costly and, in some cases, detrimental to their wards through avarice or ignorance:

Susan Lehmann, a Grand Rapids, Mich., professional conservator, was sentenced to nine months in jail in 1985 for stealing $48,000 from her wards. She was accused

of cashing wards' Social Security checks and buying a $6,000 car for herself with wards' money. A presentencing report said she had told a witness she "needed the money and they didn't."

A 1982 Miami grand jury report told of a lawyer who served as both attorney and guardian and double-billed his ward's estate to the tune of $77,000. The charges included $1,013 for the three hours it took to buy a $200 clock for the ward.

When a Hagerstown, Md., nursing home complained in 1978 about the unpaid bills of an elderly resident, court officials discovered her guardian, an attorney, had failed for five years to collect rents or pay taxes on a home she owned. The ward lost the home in a tax sale.

Court officials note that these cases are the exception. Many professional guardians are dedicated, caring people who can help the elderly through their remaining years.

For some, the deeper issue is the commercialization of guardianship, a shift from family caring and commitment to a business arrangement that often promotes itself with color brochures and slide-tape presentations.

"They can provide for all their conservatees' needs, from buying slippers or dentures, but they don't provide the social contact that is necessary," said Janet Morris, a Legal Services attorney in Los Angeles.

The growth in professional guardianship has many causes. The movement of retirees to the Sun Belt, where professional guardianship thrives, has cut off many of the aged from families and friends.

Hospitals and nursing homes looking for someone to guarantee the payment of bills for elderly patients often direct cases to private guardians when family or government agencies are not available.

"People will have some sort of crisis that puts them in a hospital or a nursing home and they can't return home. The discharge planners at the hospital have to get them out and they come to us," said Judith Chinello, a guardian in Glendale, Calif., whose office receives 25 referrals a month, mostly from health care centers.

Some companies court business from hospitals and nursing homes, agreeing to take on wards with few resources in consideration for referrals to better-off wards.

"If we can make enough to meet the payroll, we'll take on charity cases," said Bob Webster, deputy director of Planned Protective Services Inc., a non-profit Los Angeles firm.

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Some firms aim for specific markets. Ourself Conservatorship Services in Santa Ana, Calif., avoids committing itself to wards with estates of under six figures. "We have tried to stay with estates of $150,000 and over," said Judy Okonski. "We have a policy of staying with these people until they expire."

Professional guardianship does not come cheap. Ms. Chimello charges $65 an hour for her time, less for duties performed by workers who may cook, clean or chauffeur a ward. Planned Protective Services bills at $37.50 an hour for nearly all its services, but offers them free to 42 percent of its 200 wards.

About half those charity cases are people whose estates have trickled dry, in part, because of guardianship fees.

But the generosity of Planned Protective Services is not common. In many situations, once the money is gone, professional guardians petition the court to end their service, leaving the wards, already declared incompetent to handle their affairs, in a legal no-man's land.

"The outrage about the private ones is that when the money runs out, they refer it to the public guardian," said Raymond Steinberg, who studied guardianship referrals in the Los Angeles Area for the University of Southern California.

Repensek says he gets calls from attorneys eager to hand over wards whose funds are exhausted to his non-profit group, which has 80 percent indigent cases.

"When the assets run out, we get the call," Repensek said.

The AP found a file in Dallas that contained a letter to the Judge from a guardian who asked to resign because "funds in the estate will diminish when present fees" are paid. The guardian, an attorney, was paid and went on to resign.

At Minnesota bar association conference attended by the AP, prominent probate attorney Milton Bix was asked by a participant if there was a need for a guardian once a ward's money ran out.

"No," he said. "Never be afraid to petition the court."

Most professional guardians advise keeping a close eye on the ledger because profits can be marginal. May, the Detroit-area probate attorney, said he was in the business only because "it's a nice part of my practice. It fits."

"Being in the probate court all the time makes me a little bit more unique in my cost factors," he said. "It's more cost-effective for me."

May said he nets $10,000 to $15,000 annually from his guardianship business. He keeps his costs down by concentrating on wards whose day-to-day care is handled by nursing homes. Even though the court often assigns him total responsibility for his wards, he rarely has contact with them.

"There is very little visitation," he said.

First of America-Detroit, a Michigan bank company, also takes this business-like approach to the management of people's lives. The bank handles 700 conservatorships, the legal control of a ward's money, through the Veteran's Administration. It even has a special area for these clients—off a back elevator.

"I think you can understand," said Robert Adams, an assistant vice president. "We have people who come in on a daily basis to pick up their money for that day. Some of the people you think are street people are really under guardianship."

Now the bank plans to market its services to the general public.

Adams said the company's experience allows it to take on estates of less than $100,000 and still make a profit.

"They can be very hard accounts to administer," he said. "But there's an economy of scale and that's what we're looking at in these smaller cases."

Some worry that the rise of professional guardianship has come without regulations and licensing. Most state laws place few or no conditions on who can be a guardian; some ban nursing home employees and convicted felons, but few require background checks. There is no state licensing of professional guardians.

"It bothers me, not as a businessman but as someone who cares what is happening, that just anyone can hang out a shingle and become a professional fiduciary," said Alan Bogutz, who operates Care Coordinators Inc., a Tucson, Ariz., private guardianship firm. "I'm not concerned about the competition, I am concerned that some people might get hurt."

In San Francisco, where the number of professional guardians jumped from zero to 20 in one year, James Scanneanl, the city's public guardian, feels licensing is essential.

"You have more protection from someone putting a roof on your house than you do from someone who can put you in a nursing home," he said.

Others note that licensing won't be a cure-all. "You can't legislate compassion and morality," said Ms. Chinello, although she favors licensing as a first step.

Some see a time when professional guardians will be a link in a corporate-government system of health care corporations, insurance companies and social service agencies that will manage the elderly.

For Arnold that means a "one-stop shop" where all services—and decisions—would be taken care of.

"I think that government is going to recognize that we haven't found a good way of dealing with old people," he said. "We're going to need sort of total care packages where various institutions act as the guardian."

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FOUNDATION WORKS TO PATCH SYSTEM'S CRACKS

(By Lisa Levitt Ryckman, Associated Press Writer)

SEATTLE.—Eleven years ago, Emory suffered a stroke that pushed him through a hole in a system with no safety net for people like him—elderly people with disabilities, no family and little money who need independence as much as they need help.

The Foundation for the Handicapped stepped in to catch him.

The 22-year-old, private, non-profit foundation is one of the nation's oldest and largest corporate guardianship programs. It fulfills the function of a public guardian in a less bureaucratic and more personal way, helping elderly and disabled people manage their money and lives.

"There just wasn't any other agency available to provide guardianship services to elderly persons," said Executive Director George Marcoe, who estimated that 400 of the agency's 650 guardianships involve the elderly.

Founded by the United Way and private donations, the foundation manages more than $8 million in estates and trusts, and investments are monitored by a committee of trust officers. A volunteer network provides outreach and advocacy services, although the agency needs volunteers for 100 more clients.

"I think they do a good job in financial aspects of the guardianships," said attorney Karen Thompson, who acts as a court investigator in guardianship cases. "I think they would acknowledge that they don't do as well on the personal service

end of it, of really having the time and staff to be an advocate for the personal needs. There's an incredible demand for the service."

In may cases, the foundation's elderly clients have few assets. Abandoned by their families, they live alone or semi-independently on small pensions or their entitlement money, such as Social Security or disability benefits. At some point, either through physical or mental disability, they have become unable to care for themselves, and they are referred to the foundation by hospitals, social service agencies or friends.

If there is an estate, the foundation will take a fee for its work, as allowed by law. It often is a paltry sum for the time and work involved.

"They work on nothing," said Kathleen Moore, an attorney who has worked as a guardian. "They do what they can, but it certainly isn't enough. I don't fault them because (financially) they're just not able to do more."

In one case, for example, the foundation took 5 percent a month to liquidate a woman's uninhabitable home and pay her nursing home and medical expenses—a total annual fee of less than $150.

Forty percent of the agency's clients are under personal guardianships, but another 40 percent are involved in more limited arrangements that manage their estate alone or simply make sure their bills are paid.

"We usually enter into the relationship based at the level of need," Marcoe said. "We try not to take any more of the person's individual rights than we have to."

Monitoring and advocacy are central to the foundation's philosophy. A casework structure was replaced two years ago by volunteers, called guardianship advocates, who work one-on-one with clients to ensure they receive proper care.

Victoria Bozzacco, 32, a nurse, became one of the agency's 35 advocates a year ago by answering an ad in a weekly newspaper. Emory was one of her clients.

Communication has been an "incredible trick," Bozzacco said. She writes down yes-or-no questions, and Emory shakes or nods his head. Despite the barriers, they have become comfortable together, she said. They celebrated his 81st birthday in May with cake and presents. She satisfies his sweet tooth with cookies and replenishes his medical supplies.

Lately, Bozzacco had done more serious work on his behalf. The hotel where Emory lived asked him to leave, and she spent two months wandering a bureaucratic maze to find him another home.

"If I could tell you how many social workers I've talked to, how many false starts," she said. "It has taken lots of time, lots of phone calls."

She knows nothing of his past, nor he of hers. He never leaves his hotel. He has no family or friends, and the volunteer is virtually his only visitor.

Yet despite his isolation and frustrating disability, he remains a person of great charm and warmth, courtly and gracious.

"It's been a learning experience to watch an elderly person whose life gets gradually smaller and whose health is not what it used to be and who lives with a lot of frustration," Bozzacco said.

"But it seems as if his essential self is very much intact in spite of everything," she said. "And that's been really a heartening thing for me to see, as I reflect what might happen in my own life."

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NONPROFIT FLORIDA GROUP PROVIDES NATIONAL MODEL

(By Dan Sewell, Associated Press Writer)

MIAMI.—While Florida has in most ways lagged behind other large states in caring for its rapidly increasing elderly population, it is home to a guardianship program cited by some reform advocates as a national model.

"Guardianship is labor-intensive. It requires a lot of time and energy," said Frank Repensek, executive director of the Guardianship Program of Dade County Inc. "If you try to cut corners, the people you are intending to serve are going to be lost in the process.

"If you want to be a good guardian, you have to share some of the pain," said the 45-year-old veteran social worker, who has been involved in guardianships of the elderly since 1979.

James Morris, who recently studied 14 guardianship programs across the country for the Superior Court of the District of Columbia, said the Dade program is unique because it combines a broad range of services with a private, nonprofit corporation format.

"They're a prototype," Morris said. "The scope of service they deliver is certainly comprehensive in nature."

Repensek's group of 25 social workers, attorneys, paralegals, accountants and secretaries tend to the human, financial and legal needs of the program's wards, who get their checkbooks balanced, their government benefits claimed, their medical care improved, their legal snafus straightened out and, Repensek hopes, their loneliness eased.

Caseworkers try to visit each ward at least once a month, maintain frequent telephone contact, send greeting cards on special occasions and make sure birthdays, Christmas and other holidays are celebrated.

"We can't be family," Repensek said. "But if there is no family involved, we can be there as a professional staffed agency that tries to be as sensitive as we can be."

Sometimes, improved medical care and living conditions spurred by the Guardianship Program enable the wards to be restored to legal competence.

About 3 percent of the Guardianship Program's wards, all over age 60, have been restored to competency, said attorney Steve Hine.

"The Dade County program is considered the best one in the state," said Elaine New, a general counsel in Tallahassee for the state Department of Health and Rehabilitative Services.

Other private attempts as providing guardianship services haven't been as effective, said Ms. New, who has studied guardianships in Florida and elsewhere for a decade, beginning with work as a college student.

Dade's program has strong, influential community support, backing from probate judges and "an intelligent and strong executive director," she said.

Although the program includes Dade County in its title, the county provides less than one-sixth of its $660,000 annual budget. The nonprofit organization gets other moneys from federal grants for the elderly, the United Way of Dade County, the Florida Bar Foundation and other private organizations.

No money comes from the state of Florida, which has done little to provide guardianship services for its burgeoning elderly population.

The program also collects fees from non-indigent clients, who can be charged up to $75 an hour and for their own rent. They constitute about 20 percent of the caseload.

Since beginning as a provision of Jewish Family Services, receiving some federal funding and growing into an independent agency in 1982, the Guardianship Program has overseen 650 wards. Its referrals usually come from state social workers or judges.

"I feel better putting them in an organized program I know if there are no relatives around," Dade Circuit Judge Moie Tendrich explained recently after placing a 101-year-old man in the Guardianship Program.

Lisa Kine Goldstein, the state's Public Guardian in Broward County, has been studying the Dade program with an eye toward converting her state program to the private, nonprofit model, which would enable her to attract funds from outside sources, along with fee-paying clients.

Repensek's group is confined to Dade County, in which more than 20 percent of the nearly 2 million residents are over age 60. The population includes 35,000 people over the age of 70 who live alone.

Because of south Florida's transient and retiree nature, its guardianship needs are great. A Florida international University survey this year indicated 26.7 percent of the county's elderly have no relatives living within 30 miles.

The lack of family and the intense nature of the urban existence are conditions that make elderly people with slight physical or mental problems vulnerable, Repensek said.

He conducted a "needs assessment" this summer and concluded 2,000 to 3,000 people in the county need guardians. His program had taken almost 90 wards this year by August, well on its way to topping the previous annual high of 113.

Referrals have jumped dramatically, Repensek said, but without additional funding, his program can't carry more than 300 wards.

His workers spend too much time caring for each ward to take on a heavier load, he said.

"Some call me daily to complain about something, or just to talk," said caseworker Cathy Nettleton.

STRICTLY BUSINESS: GOP ACTIVIST RUNS CONTROVERSIAL AGENCY FOR OLD FOLKS

(By Mark Fritz Associated Press Writer)

DETROIT.—Alan May quickly concedes what his critics call his most serious flaw: he has little personal contact with the hundreds of ailing, impoverished and generally unwanted elderly people whose fate he controls.

"That is not a knock. That is a truth. There is very little visitation," said the 45-year-old Southfield lawyer.

As guardian and conservator of people judged mentally or physically incompetent, May can decide where his 400 wards live, how much money they get, whether they may marry, even whether a comatose ward should be removed from life-support systems.

He is best known as a member of the Michigan Civil Service Commission, a former chairman of the state Civil Rights Commission and an influential state Republican Party activist.

But he also is essentially the guardian of last resort in Detroit's Wayne County, the state's most populous and a place where demand for guardians far outstrips supply.

Critics say May's for-profit guardianship operation represents many of the weaknesses in the system, that it gives profit a higher priority than personal care, that it reduces his wards—old people languishing in low-budget nursing homes—to numbers on a computer printout.

"I understand it's well-organized. But its greatest deficiency may be whether anybody sees the ward," said J. Kay Felt, a Detroit probate lawyer.

But May said he must rely on nursing home workers and Michigan Department of Social Services staff to monitor his wards while he concentrates on money management.

"I am in absolutely no position to employ social workers. The difference between a small profit and a total loss is the difference between night and day," he said.

May said the guardianship portion of his business, about 30 percent of his practice, brings in only $10,000 to $15,000 yearly. "To my knowledge no one is as heavily involved as I am because I don't think there's much profit in it," he said.

Some Michigan DSS workers grumbled last year about the mention of May's law firm in a memo outlining the referral process for Adult Well-Being Services, a Detroit agency with a contract to provide guardianship services.

Since Adult Well-Being's capacity was limited, the July 1986 memo obtained by the Associated Press said referrals should be made "only after all other resources have been exhausted, such as relatives, friends, or the law firm of May & May."

Some DSS caseworkers complained that the referral was prompted by May's April 1985 appointment to the state Civil Service Commission, which oversees state employee hiring.

On Oct. 24, a second DSS memo instructed staff to strike "the law firm of May & May" from the previous directive and replace it with "various legal firms-agencies."

May said the conflict-of-interest complaints are unfounded.

"I've been getting referrals from DSS since 1975, and I became a civil service commissioner in 1985," he said. "I see absolutely no connection."

May said he believes his caseload hasn't grown too large to manage. But state guardianship records show May was delinquent 72 times in a four-month period this year in filing court-mandated annual reports on his wards.

May disputed the figures, saying Wayne County Probate Court is merely slow to process reports even when he files them on time. But court executive Sharon Teasley said guardians aren't listed as delinquent unless they actually are remiss.

May is often recruited by hospitals to act as a guardian of poor elderly people with no family, but some hospitals say they are becoming increasingly uneasy about May's relationship with Lawrence Charfoos, a noted medical malpractice lawyer in Detroit.

Probate lawyer Stephen Kelley, who represents several hospitals, said he has advised clients not to use May as a guardian because May is making medical decisions on behalf of his hospitalized wards and, at the same time, helping a lawyer who sues hospitals.

But May said his business relationship with Charfoos isn't a secret and doesn't represent a conflict, noting that the stationery letterheads of each lawyer lists the name of the other.

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CONSERVATOR CASE MADE BROADWAY PRODUCER FEEL LIKE PRISONER

(By Judie Glave, Associated Press Writer)

NEW YORK.—Broadway impresario David Merrick is known for making fiction come to life, something he did 66 times with such productions as "Hello Dolly" and "42nd Street."

But in the winter of 1983, at age 71, he found himself the unwitting star of a real-life court drama when he suffered a debilitating stroke, became embroiled in a messy divorce and had a conservator take over financial control of his $50 million estate.

Because his money was no longer his to spend, the court had the final say over an array of decisions ranging from stopping the London production of "42nd Street" to questioning the purchase of a ladder.

Far from a typical case, the credentials of the key players in the Merrick drama could fill a Playbill.

They included palimony lawyer Marvin Mitchelson and divorce king Raoul Felder, who arrived at court in a white, chauffeur-driven Rolls Royce limousine.

Add a former federal judge, Simon Rifkind; former New York Mayor Robert Wagner; and former state Attorney General Louis Lefkowitz.

After a February 1983 court hearing where doctors, business associates and friends testified that Merrick could not handle his affairs, the court appointed Morton Mitosky, a Merrick business associate, to handle the estate. At the time, Merrick supported the move.

At the same time, Merrick divorced his fourth wife, dancer Karen Prunczik, and remarried his third wife, Etan Merrick, 42.

Ms. Prunczik opposed the conservatorship until Mitchelson handled her divorce and helped her win a healthy settlement.

A year into the conservatorship, Mitosky asked to be removed, leaving Mrs. Merrick the sole conservator.

Months later, with the help of therapists, Merrick's condition so improved that Mrs. Merrick asked the court to overturn the conservatorship.

But she learned that ending it was tougher than getting it started.

"It isn't very easy to prove that you are a functioning person again, especially since just two years before you went to great ends to prove you weren't," she said in a recent interview at the couple's Manhattan brownstone.

"There was a general resistance" to letting Merrick have control of his estate again, in part because "nobody wanted to let go of the whole machinery because it was so lucrative."

To date, the Merrick estate has doled out nearly $1 million in attorney fees, a figure that could easily double since some of the attorneys are still waiting for final payment.

The vast size of the Merrick estate brought it under extraordinary judicial scrutiny.

When Merrick wanted to produce "42nd Street" in London, a judge told Mrs. Merrick she could not give him $1.5 million of his own money to back the play.

"He said he was an inappropriate investment," Mrs. Merrick recalled. "Here we had a show that was a proven property (in four years it had grossed $21 million on Broadway) . . . and the judge told me it was illegal."

She appealed the judge's order but an appellate court upheld the lower court's temporary order.

One of the three presiding justices, however, wrote a dissenting opinion saying that Merrick had built his estate on theatrical ventures and the court's intervention was akin to telling Henry Ford he couldn't make automobiles or John D. Rockefeller to forget about the oil business.

Yet, the order was not overturned until Wagner, who was appointed a guardian ad litem to protect the interests of Merrick's two daughters, went to London and questioned Merrick for the court.

"I felt as if I were a criminal, as if I had to prove I wasn't doing anything that my husband didn't want," Mrs. Merrick said.

"Their every expense was questioned," said attorney William Goodstein, who was hired by the Merricks to overturn the conservatorship. "They had to account for every item on their American Express bill. They even had to account for buying a stepladder for the basement."

To appease the courts, Mrs. Merrick began handing in monthly, instead of yearly, accountings, detailing how every penny of her husband's complicated estate was spent. "That was a costly and monumental task," she said.

Although the conservatorship was scheduled to end in early 1985, Mr. Merrick went to court in December 1984 to overturn it.

Merrick, who was absent at the first hearing, went to court in January to prove he was capable of handling his affairs.

He gave a showstopping performance, which included a discussion between Merrick and the judge on who would win the 1985 Superbowl. Merrick predicted the Miami Dolphins would beat the San Francisco 49ers.

Though he was wrong—San Francisco won 38-16—the judge found Merrick capable of resuming control of his estate and ended the conservatorship.

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ONE OF MORE NOTORIOUS CONSERVATEES: DAVID "SON OF SAM" BERKOWITZ

(By Judie Glave, Associated Press Writer)

NEW YORK.—"Son of Sam" killer David Berkowitz may be the most notorious of the hundreds of thousands of Americans currently under care of court-appointed guardians.

Berkowitz's 13-month reign of terror ended with his arrest in August 1977 for killing six young people and wounding seven others.

Three months later he was placed under a conservatorship on the advice of lawyers who anticipated a deluge of requests from authors and moviemakers eager to capitalize on the sensational .44-caliber killer's story.

By October 1980 the former postal worker's personal bank account had been fattened from $1,000 to $102,000 as a result of movie and book deals, most of which eventually fell through or failed to generate much income.

Interest from bank accounts, U.S. Treasury bills, tax refunds and Social Security payments helped swell that figure to as much as $190,900 by early 1987, according to court papers filed by attorney Doris Johnsen, who took over as Berkowitz's conservator in 1978.

Despite her efforts, it was determined last month that the money in the estate should go to the survivors.

Conservators are empowered by the court to make financial decisions for a physically or mentally incapacitated person.

The court papers in Brooklyn on the Berkowitz conservatorship were opened to a reporter for the first time in early September after The Associated Press successfully argued that, under the state mental hygiene law, conservator files were part of the public record.

The money was a key issue in a long court battle between attorneys for Berkowitz's victims and Ms. Johnsen.

The lawyers argued that the victims were entitled to the money under the state's 1979 "Son of Sam" law, which prohibits felons from making money as a result of their crimes. That law was passed also because of the potential for Berkowitz to profit from selling his story; it sets up a system for compensating the victims instead of allowing the money to go to the criminal.

But Ms. Johnsen argued that she was exempt from the "Son of Sam" law because she was appointed by the court, and therefore was a court employee, and not a representative of Berkowitz.

The state Legislature amended the "Son of Sam" law in 1984 to make it clear that conservators were included. As a result, a Brooklyn judge last year ordered Ms. Johnsen to pay the Berkowitz victims $20 million.

However, the expected millions from movie and television deals actually added to to only $119,433 as of June 1987. Of that, attorneys for Berkowitz and his victims put in claims for fees totaling $120,000.

Justice Dominic Lodato, who sits in Supreme Court in Brooklyn—the state's trial level court—dealt the attorneys a blow by denying their fees and awarding all but $1,000 to the victims.

The most seriously injured of Berkowitz's victims, Joanne Lomino and Robert Violante, will receive the bulk of the money. Miss Lomino, a paraplegic as a result of Berkowitz's attack, will receive $46,200 and Violante, who lost his left eye, will get $29,600.

The rest will share in money ranging from $600 to $8,900, according to figures set in Lodato's order.

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PART IV: GLOOMY OUTLOOK, BUT SOME ALTERNATIVES TO GUARDIANSHIP

EDITOR'S NOTE.—As troubled as the nation's guardianship system is today, experts say the strains will grow far worse in the future. As the population grays, the outlook for effective guardianship darkens. This, the final part of "Guardians of the Elderly: An Ailing System," looks at the future.

(By Fred Bayles and Scott McCarteny, Associated Press Writers)

MIAMI.—Judge Moie Tendrich picks up the telephone in his chambers to conclude guardianship proceedings on a 101-year-old man, bed-ridden and diagnosed as senile and chronically ill.

"Frank," the judge says to Frank Repensek, executive director of the Guardianship Program of Dade County Inc., "can you take somebody for us?"

What a quick phone call and a "hearing" in which he was the only participant, the judge has decided the fate of another senior citizen.

It happens almost every day here. With its booming elderly population, Florida, some say, reflects the demographic future of the nation, a glimpse of what the aging population will look like in 20 years.

And so in this state rich in retirees, the future of the nation's guardianship system may also be found.

Nowhere is the need for quality care greater for the elderly, yet almost nowhere, experts say, are the probate courts more overburdened with guardianship, the quality of justice so variant, the oversight and due process, in some counties, so suspect.

"The problem is the courts were never set up and never intended to deal with the volume," said Repensek, who added Tendrich's case to his 270 other wards.

"As people get older, there's going to have to be some system for dealing with the legal and personal needs of these people. Guardianship is not the best alternative. But what we're faced with right now is that it's what's available," he said.

What the probate courts are faced with are numbers. The government predicts that in the next 15 years, the number of older people in the United States will jump 22 percent to nearly 35 million.

The group older than 75, those most likely to face guardianship, according to an Associated Press study, will grow from about 12 million to 30 million by the year 2030, and the group over 85 will triple to 8.6 million people.

Today, those who deal with guardianships, probate courts and the elderly predict that the need for greater oversight and tools such as court investigators will become more critical, and legislatures will be called on to change state laws to improve due process and court care of the elderly.

Already, volunteer programs and alternatives to guardianship are cropping up.

In South Bend, Ind., for example, the task of looking after many of the community's elderly has fallen on tough-minded, cigar-smoking county prosecutor Mike Barnes.

Under Indiana's Adult Protective Service Act, prosecutors like Barnes must minister to abused and neglected old people, prosecuting their tormentors and, more frequently, assisting them to carry on with their lives.

Barnes can get them help to do their shopping, clean their homes and keep track of utility bills.

Of all his tools, the last choice is guardianship.

"That is the least preferable alternative as far as we're concerned," Barnes says. "The whole thrust of this program is that there be reliance and self-reliance."

The prosecutor echoes the thoughts of a variety of nonprofit groups, churches and charities across the country that offer alternatives to guardianship, a process that strips people of all rights and puts their lives in the hands of others.

Advocating options such as power of attorney and social service help like Meals on Wheels, these programs strive to keep the elderly in their homes with rights and dignity intact.

The Cathedral Foundation, a Jacksonville, Fla., church charity, has provided services, including money management, to 1,000 old people since 1978. Only 49 ended up in guardianships.

"Guardianship is totally, philosophically the opposite of what we try to do," said Teresa Barton, the foundation's community services director. "The system's way of dealing with it was to remove the person from their home. We said, 'Let's create a support system that lets them stay at home.' "

In some cases, the elderly have come up with their own solutions, even creating programs to blunt guardianship petitions within retirement communities.

Guardianship-conservatorship is a very impersonal and costly service," said Ralph Raymond, an 84-year-old Tempe, Ariz., retiree who set up a volunteer program for his neighbors. "It's a completely unsatisfactory last resort."

Barnes' office and Cathedral use tools common to other alternative programs, such as durable power of attorney, where specific decision-making powers are assigned to another person, and representative payee, where a person is given limited authority over another's financial matters.

But there is resistance to such alternatives.

Milton Bix, a Minneapolis probate attorney, worries that plans without the court supervision mandated under guardianship open the door to financial abuses.

"I'm scared to death of it," Bix said of durable power of attorney. "It means less guardianship, so while their civil rights are being protected, their assets are not."

Some states and judges, too, have tried their own mini-reform movements.

In 1981, Minnesota made guardianship hearings mandatory, improved notice sent to proposed wards, changed the standard required for proof of incompetence to "clear and convincing" evidence, instead of the weaker "preponderance of the evidence," and required courts to check on each guardianship annually.

The changes followed the Minneapolis Tribune's exposing of misdealings by a company appointed guardian of more than 300 people.

In Tucson, Ariz., Superior Court Judge Alice Truman took it upon herself to require guardians to report on the welfare of their wards. "After all," the judge said, "the guardian is responsible for the person's life and well-being."

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Probate Judge W.F. Spicer has hired two court investigators in Summit County, Ohio, set up a public guardian's office and developed a review process, none of which is required by law.

"If you take your job seriously, and you look at all the responsibilities you have, (guardianship is) probably the greatest responsibility of any of the functions of probate court," said Spicer.

Said Hank Hudson, Montana's state legal services developer for the elderly: "It's not a question of doing away with guardianship. It's a question of finding someone who is willing to do the job well."

A group of judges last year published recommendations for overhauling guardianship, arguing the system needs investigators and auditors to prevent abuse and attorneys dedicated to protecting elderly clients against unwarranted guardianships.

The changes, they say, should be similar to those made in mental commitment procedures in the 1970s, and not unlike safeguards built into the adversarial system in criminal courst.

"It's like deja vu," said Probate Judge Victor S. Pfau of Indianapolis. "This is the same process we eventually went through on the changes in civil commitment procedures. We were far too quick to commit someone to a mental institution, but we fought those changes like crazy, and we used the same arguments.

"And now, you know what? It works."

But with few prospects for a major overhaul of the guardianship system on the horizon, experts on elderly affairs paint a gloomy portrait of the future.

"I fear we'll end up with a caretaker class of people, reduced to the status of children, herded together as 'protected' people and placed into camps," said Justin Clouser, a Las Vegas, Nev., legal aide attorney who has worked with guardianship in Florida and Nevada.

Some say the judges' own reform effort is too little too late.

"(It's) dragging the process of guardianship kicking and screaming into the 1950s," said David Grant, director of the Guardianship Diversion Project in Los Angeles, which advocates less restrictive alternatives to guardianship.

George Alexander, a probate law expert at Santa Clara University in California, led a commission that overhauled state guardianship laws. The changes included a state-funded program of court investigators who visit wards and check-up on guardians.

Yet Alexander's experience has now made him leery that any reform can make the system work.

"I fear that people keep saying, 'Let's throw a little more due process at it and forget about it.' It's dangerous," Alexander said. "Each bit of tinkering has the outcome of helping a few people and also getting people moving on and saying, 'We dealt with that.'"

Alexander recommends individuals draft a durable power of attorney so they can designate their caretakers and financial advisers, even forming a committee to insure against wrongdoing.

All this, he hopes, will offer alternatives to guardianship.

"I believe," he said, "it's an institution so dangerous and so capable of abuse that we just ought to abolish it."

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RETIREE HELPS ELDERLY FRIENDS WITH CARE CONTRACTS

(By Fred Bayles and Scott McCartney, Associated Press Writers)

TEMPE, ARIZ.—To Ralph Raymond, a self-described WOOPIE (Well-Off Old Person), helping his neighbors is serious business.

The retired utilities executive from Chicago became aware of guardianship when a neighbor suffered a stroke at Friendship Village, a retirement community in Tempe. An attorney recommended guardianship to the family, but Raymond helped his friend oppose it.

Today, Raymond runs Concerned Friends, a program he founded that offers an alternative to guardianship and is cited as a national example by guardianship experts.

"There's the trauma of being partly incapacitated and going to probate court and talking about your problems to people you haven't met," he said of guardianship. "Worst of all, you pay for it."

More than 160 of the Friendship Village's 700 residents, their average age 80, have contracts with Concerned Friends to see to their care if they become incapacitated.

The organization's board of directors assigns two people to each case, usually a resident and a member of the person's family. The pair are empowered by durable power of attorney to make joint decisions and handle financial matters for the client.

Their decisions and their handling of the monies are reviewed monthly by the board of directors.

"We're always reluctant to spring a power of attorney until it's absolutely needed," said Raymond.

Raymond has power of attorney for five people; his wife serves as adviser for an elderly woman.

"She sees the person at least once a day and talks to her son at least once a week," said Raymond. "She has become a member of that family. With a professional guardian-conservator, you couldn't expect that kind of service and the cost would be prohibitive."

Raymond sees his program as an echo of the days when families and towns cared for their own without the help of lawyers and courts.

"It's a responsibility," he said, "but what the hell are we here for at this age if we can't be of help to our neighbors who are less fortunate?"

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AIDS PATIENTS MAY CREATE NEW NEED FOR GUARDIANS

(By Jennifer Dixon, Associated Press Writer)

FORT WORTH, TEXAS.—A teacher hospitalized with AIDS quickly developed brain problems that affected his ability to speak, but didn't require intensive medical care.

The hospital contacted his family in Kansas, but they didn't want to bring him home. His elderly mother refused to come to Texas and care for the terminally ill man at his trailer home, and nursing homes wouldn't accept him either.

So the hospital, needing someone who could approve medical treatment for the 44-year-old man and handle his financial affairs, turned to the Tarrant County probate court to find a guardian.

Decisions about the care of abandoned AIDS sufferers may increasingly fall to probate courts, especially since dementia has been included in the list of the disease's symptoms, said Tarrant County Probate Judge Pat Ferchill.

"This is the modern-day leprosy," said Steven Sotman of Fort Worth, a doctor certified in internal medicine and infectious diseases.

Guardianships in Texas traditionally have been established for juveniles, mentally retarded or mentally ill adults, and the mentally incompetent elderly, but Ferchill says he believes AIDS could create another dimension of guardianship.

The federal Centers for Disease Control added dementia and emaciation to pneumocystis carinii pneumonia and Kaposi's sarcoma as indicator symptoms for AIDS, effective Sept. 1.

Studies indicate about 80 percent of AIDS patients have some degree of brain abnormality before death, but in only one of about 20 cases is dementia the main problem, Sotman said.

Ferchill learned of the teacher's plight when the hospital's manager of social services notified the court the man needed someone to handle his financial affairs and asked that a guardian be appointed.

According to court documents filed in Tarrant County, the patient's checks from the Fort Worth Independent School District were being deposited directly into his bank, but his salary would run only through September.

"His family lives in Emporia, Kan., and does not want the responsibility of caring for his financial needs," a letter from the social services manager said. "I feel strongly that (the patient) needs a guardian appointed to care for these needs."

Ferchill said he filed a petition seeking a suitable guardian because he believes it's his responsibility under the Texas probate code when the needs of an alleged incompetent are brought to the court's attention.

The attorney Ferchill appointed to represent the teacher in legal proceedings located a potential guardian this summer, but the man died before a hearing could be held.

The judge foresees special responsibilities for the guardian of an AIDS sufferer.

"I imagine guardians will have a difficult time finding a placement for them in a health care facility or whatever it may be," he said. "I believe there is a point in time when they do not need hospital services, but they do need care services. I think a guardian might meet up with some difficulty placing wards who do not need intensive medical care that a hospital can offer, and in paying the enormous cost of this disease.

"I imagine guardians will also have to do some negotiating, advocating with insurance companies . . . to make sure they (AIDS patients) do obtain the maximum benefits for whatever coverage they do have."

An AIDS patient's medical bills can reach $40,000 to $50,000 from the time of diagnosis until death—a span of usually a year, Sotman said. Most AIDS patients must be hospitalized once or twice between diagnosis and death, but otherwise can be cared for elsewhere, he said.

Under the Texas probate code, residents can designate who they would want appointed guardian in case of incapacitation and also list those they would not want named. A designation against someone prohibits a judge from ever appointing that person, Ferchill said.

Should an AIDS patient not designate who he wants as guardian, a judge would go through statutory priorities—the spouse first, and then next nearest of kin—before neighbors and friends were considered.

Although such arrangements are possible for anyone before becoming incompetent, many patients aren't taking advantage of them, said Gary Swisher, director of AIDS programs and volunteer services at the Oaklawn Counseling Center in Dallas.

"People refuse to deal with the concept that you may lose your mind," he said. "The greatest insult is that you'll become a bumbling idiot . . . and they refuse to sign a guardianship or a power of attorney."

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CATHEDRAL PROGRAM OFFERS GUARDIANSHIPS—ONLY AS LAST RESORT

(By Ron Word, Associated Press Writer)

JACKSONVILLE, FLA.—The Cathedral Foundation provides guardianship services, but officials of the private social services agency consider them only a last resort.

Take, for example, Laura Buckley, a 95-year-old legally blind woman with a love of Jim Beam whiskey, chocolate and beer.

Elderly Floridians in similar circumstances often wind up under guardianships, but, through the Cathedral Foundation, Mrs. Buckley was able to continue to live alone and retain all her civil rights.

Foundation social worker Bobby Krawiec visits Mrs. Buckley about three times a week and hires a sitter for her on other days. The foundation's Protective Counseling Services program helped avoid a guardianship by handling her finances and making sure she gets hot meals.

Mrs. Buckley, who went dancing on her 90th birthday, says of Krawiec: "He's marvelous. I don't know what I'd do without him. When you get to be my age, you need someone to come in, even for a couple of hours."

The Cathedral Foundation was formed in 1962 by parishioners at St. Johns Episcopal Cathedral as an outreach ministry, with several programs for the elderly.

Its Protective Counseling Program, which is financed through contracts with the state using federal funds, began in 1978 as an outgrowth of needs identified by workers in the Meals on Wheels program.

Costs for handling each client run about $1,198 a year, compared with $18,000 annually in a top nursing facility under Medicaid, and the services are provided at no charge to the foundation's clients.

The counseling services program is designed to help keep people out of guardianships, through advice on finances, housing, nutrition and public benefits.

"All these people need is someone to look after them, help them manage their money or provide them with hot meals daily," said Teresa Barton, director of community services for the foundation.

"What they were finding out with the Meals on Wheels program, dealing with the homebound elderly, was that, in addition to needing meals, there were all kinds of problems that were associated with being homebound—things like getting down to pay taxes, understanding Social Security benefits," Ms. Barton said.

"We were dealing with elderly, low-income in many cases, very uneducated individuals who didn't understand the system and they really didn't have anyone to advocate for them," she said.

In managing the lives of elderly people, "a very delicate balance of individual liberty versus governmental intrusion is necessary," according to a publication from the foundation, which has about 12 guardianship wards and 80 to 100 voluntary clients.

"Guardianship in the state of Florida has more to do with laws of property than laws of people," Ms. Barton said. "Guardianship is a way of protecting assets and property. It is not necessarily the best vehicle to deal with people problems."

The Cathedral Foundation does not initiate guardianship action but agrees to it when no other alternative is available, such as when someone is needed to authorize medical care.

"What do you expect to obtain from the guardianship that you couldn't without it? That's the criteria I evaluate it with. It has to have a goal," Ms. Barton said.

When the word "guardian" is mentioned, "it conjures up visions of guardian angels and protective people who are helping you. . . . But the guardianship statute, as it is today in Florida, is a very punitive kind of statute," she said. "It strips you of your individual rights. They can't make a contract. They can't get married. They can't drive. They lose all of their civil liberties entirely.

"Having a guardian doesn't mean a person is not going to be a problem any more. Mr. Smith is suddenly going to be well? He's not going to be going through garbage cans anymore because he has a guardian?"

Elderly people have a right to be individuals, and to make mistakes, just as young people do, Ms. Barton said.

"It's like a 70-year-old man who runs around with a 20-year-old girl and he's blowing all his money," she said. "Immediately, his family wants him declared incompetent. 'Dad has lost his mind.'

"You have the right to make mistakes whether you're 14, you are 40, or if you are 94."

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GROWING SENIOR CITIZEN POPULATION POSES PROBLEMS

(By Robert Macy, Associated Press Writer)

LAS VEGAS, NEV.—Stop by a casino that caters to locals and you'll notice the nickel slot and poker machines are abandoned almost on cue each afternoon and evening when the bingo games begin.

Seniors who retire to this desert community by the thousands each year have made bingo one of the most popular games in town. And casinos that court coveted high rollers are also making sure seniors feel at home in the gambling environs.

"This is just a great place to retire," says Jared Shafer, Clark County's public administrator. "When you match up our taxes, our living costs, our entertainment, our standard of living for seniors . . . this has got to be the greatest place in the world to live."

Shafer, one of two Nevada guardians, has a particular interest in the growing senior population and connected problems. His office is responsible for taking charge of the elderly who become unable to manage their affairs.

Many people retire here, far from family and friends who would otherwise care for them in their twilight years. The job of overseeing those lives, and sometimes their estates, falls on Shafer and his staff.

About 75,000 senior citizens aged 55 and over are among the 600,000 residents of Clark County, and the numbers will increase as the city heads toward the 1 million mark around the turn of the century.

The influx is posing problems for city, county and state officials.

"We're right to the brim now in terms of the people we can accommodate," said Mel Kalagian, director of the city's senior centers and a longtime advocate of the elderly. "They're coming here in droves because of our weather and recreational activities."

But when retirees settle far from their hometowns, family members cannot get as involved as they might like when health problems and other troubles occur.

"Mom and Dad retire here from the Jersey shore," Shafer explains. "The kids are raising their own teen-agers back there. Our first step (when a senior needs help) is to convince Mom and Dad's families they can get involved, they should get involved. But in some cases we're talking great distances."

Gov. Richard Bryan has campaigned long and hard for legislation that would head off such problems. His Elder Care Bill, which passed the 1987 Legislature, provides $1.5 million over the next two years for services such as home delivered meals and housecleaning for those too frail to care for themselves.

Bryan pushed for the measure in an effort to keep elderly individuals in their homes as long as possible. He warned that nursing home care could cost the state $230 million by the year 2000.

State reports show Nevada needs an additional 4,600 nursing home beds to meet the demands of the elderly by the turn of the century.

"Between now and then, Nevadans can expect to expend almost $1 million for this increase in nursing home care, unless options are developed," the governor warned.

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NOBLE COUNTY FARMER CHALLENGES AND BEATS GUARDIANSHIP

(By Thomas P. Wyman, Associated Press Writer)

ALBION, IND.—Tod Porterfield says he doesn't have Alzheimer's disease, and no medical records show otherwise.

Yet the 83-year-old Porterfield spent 10 months under a guardianship, and three months in a nursing home, after a court accepted a guardianship petition alleging he suffered from the irreversible neurological disorder.

The petition was filed in 1985 in Noble County Superior Court by attorney John W. Whiteleather Jr. of Columbia City. It does not say when Porterfield was diagnosed, or by whom. An inspection of the court file failed to find any medical testimony or evidence to support the claim.

"No doctor ever diagnosed me," Porterfield said in a recent interview. "I never talked to a doctor or even an officer of the court."

Whiteleather said he was told by a social worker at the hospital that treated Porterfield, a client and acquaintance, that the old man had Alzheimer's. The attorney said he decided to petition for guardianship on that information and Porterfield's distress over the recent death of his wife and his own blood cancer.

Whiteleather said he felt he was acting in the farmer's best interests, explaining that illness and grief had left Porterfield incapable of managing his affairs and helpless to seek effective aid.

"If the diagnosis of Alzheimer's was not quite correct, I tell you this much, I will tell you there wasn't any doubt in my mind whatsoever that Tod Porterfield needed my help," Whiteleather said. "I'm glad in spite of all this I was there and able to make myself available to him."

Indiana law allows a court to consider a doctor's statement in ruling on a guardianship request. Formal medical evidence is not required, however. Some county courts create guardianships for the elderly based on the observations of family members or even hearsay.

The file also offers no clear evidence Porterfield was notified of the guardianship proceedings, which is required by law. A notice addresed to Porterfield is in the file.

but a standard form to indicate the notice had been served was neither signed nor dated by the server.

The Allen County Mental Health Association investigated Porterfield's case and found no indication he had been told, according to a health association report.

Porterfield, who lived alone, was discharged from the hospital in 1985 and said he was surprised to see the hospital van driver pass the road to his farm.

"All of a sudden we're in front of a nursing home. I said, 'What's this all about?' I thought I was going home," he recalled. "I gave them an argument."

"I had no knowledge of what they were doing," Porterfield said. "There was no mention of a guardianship at any time when I was in (the hospital)."

Porterfield, who claimed he was held at the nursing home against his will, was discharged after three months. He returned to his farm, where a full-time housekeeper arranged by the mental health association helped maintain his house.

The association also contacted a lawyer who agreed to help Porterfield end the guardianship. In October 1985, the court agreed to close the guardianship of person, but kept a limited guardianship of the estate administered by a local bank. The following February, the limited guardianship was dissolved.

After nearly a year of investigation, the health association finally traced the Alzheimer's diagnosis to a social worker at St. Joseph's Hospital in Fort Wayne, where Porterfield had been treated for a recurring abdominal ailment.

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APPENDIX II

ST. PETERSBURG TIMES • ■ SUNDAY, DECEMBER 14, 1986

WARDS OF THE COURT

Guardianship: Promises of protection often broken

■ *First in a series*

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Rosalee Silkwood, 86, had been dead two weeks when a judge named a guardian to help her manage her life.

William Summerson, 78, lost all his civil rights when two doctors misdiagnosed what was wrong with him.

Edith Stewart, an 87-year-old widow presumed to be senile, was permitted to rewrite her will, leaving about $230,000 to her guardian.

And 72-year-old Henry McIver, promised good care from his guardian, wound up living in a fire-damaged house without running water or electricity.

Each of these cases was bungled by a system that promises more than it delivers. The system is called guardianship.

Born of good intentions, guardianship can be a cradle of neglect and abuse. The victims of its failures are society's most helpless people — the wards of the court.

Wards are people whom a judge has declared incompetent to take care of themselves. The judge takes away their civil rights because they seem confused, feeble or dangerous. He assigns them caretakers known as guardians.

There are 3,500 wards in Pinellas County, a number that grows each year.

Most Pinellas wards seem to get good care from honest and decent guardians. But they are well-served in spite of the guardianship system, not because of it.

The system allows a ward's rights to be stripped away on the thinnest of medical evidence. A finding of incompetency is often a careless proclamation made without legal representation of the ward's interests.

And once a guardian is appointed, the system provides little oversight. People can be neglected, abused or financially exploited for months before anyone notices.

For the past year, the *St. Petersburg Times* has investigated Pinellas County's guardianship system. Reporters studied at least 1,500 court files, conducted several hundred interviews, attended court hearings and watched the work of guardians.

The *Times* found a system that is:

■ So hasty that a woman was declared incompetent on the basis of a brief, hostile chat with a psychiatrist through a screen door.

■ So imprecise that a man was labeled senile and removed from his home when his problem was simply a vitamin deficiency.

■ So cavalier that almost nine of every 10 people were declared incompetent and assigned a guardian without being represented by a lawyer.

■ So impersonal that judges appointed guardians who had never laid eyes on the wards they were trusted to serve.

■ So unregulated that people were named as guardians without having to disclose their involvement in serious crimes, including soliciting to commit murder.

■ So loosely monitored that a guardian repeatedly bounced wards' checks without being fired.

■ And so dangerous that a mentally unstable woman threatened her incompetent husband but remained his guardian until her arrest for slashing his throat.

Says Pinellas Circuit Judge Maynard F. Swanson: "I think we need a general overhaul of the entire system."

The guardian's role

A ward of the court is like a child.

He can't vote, can't drive, can't marry or divorce, can't sign a check, make a will, sell property or enter into any contract. The guardian decides where the ward lives, what he eats, how his money is spent and what kind of medical care he gets.

Being judged incompetent means losing more civil rights than a convicted criminal. A criminal, at least, can hire a lawyer to protect his interests.

Everyone is a potential ward. Anyone could grow too forgetful, or love liquor too well, or catch a terrible illness, or suffer a crippling accident. For whatever reason, anyone could someday be deemed incapable of caring for himself or his

belongings and be assigned a guardian.

Sometimes the guardian is a family member or friend and serves for free. In other cases, a professional guardian is appointed and claims fees from the ward's assets. The rate is usually $15 to $20 per hour.

The guardian is expected to visit the ward, oversee his medical care, attend to his personal needs and manage his finances. He has total control over the ward's life.

"Whether you're a good or bad guardian, (wards are) entirely at your mercy," says longtime professional guardian Richard Cottrell.

But despite the radical consequences of incompetency and the huge responsibilities of being a guardian, the system's procedures lack safeguards.

A foregone conclusion

The process begins when a petition is filed in court alleging that someone is incompetent (see story above). Once this is done and a hearing is scheduled, guardianship is almost a foregone conclusion.

For instance, in the first six months of 1985, judges held competency hearings for 408 persons. All but seven were declared incompetent.

Judges base their rulings on brief tests performed by low-paid psychiatrists under difficult conditions. The psychiatrists' diagnoses are sometimes wrong. If not corrected, misdiagnosis can prevent wards from getting proper medical care and reduce their chances of recovering.

William Summerson, a retired government biochemist from St. Petersburg, was misdiagnosed in May 1984.

Two court-appointed psychiatrists reported that he suffered from a nontreatable, irreversible deterioration of his brain. He was declared incompetent.

But Summerson's guardian had him treated anyway. Three other psychiatrists conducted more thorough tests and found a history of strokes, not senility. He recovered within a year and his legal rights were restored.

The *Times* found numerous cases where wards were misdiagnosed. But the system doesn't insure that mistakes are caught.

Most judges don't recognize conflicting diagnoses when they see them, even though conflicts occurred in about 20 percent of the cases the *Times* studied.

Sometimes judges pay no attention to psychiatrists who urge more thorough testing. And many guardians aren't knowledgeable enough to seek the medical care that could help their wards recover.

Lawyers could challenge the psychiatrists' findings and demand quality care, but they seldom appear on behalf of the wards. Only about one person in 10 is represented by a lawyer when his rights are removed.

So little care is taken that a dead woman was once declared incompetent.

On Oct. 17, 1983, Rosalee Silkwood of St. Petersburg was judged incompetent. Her proposed guardian and the guardian's lawyer had gone on vacation, didn't check on her and went to court without knowing she had died 16 days earlier in a hospital.

Few standards, watchdogs

Just about anyone can be a guardian. Florida law excludes only minors or convicted felons.

"What qualifies you? A stroke of the judge's pen," says Pinellas Circuit Judge Thomas E. Penick Jr.

Guardians don't have to submit to background checks.

If they did, judges might not have appointed a guardian who helped steal a load of lumber in 1979. If they did, judges might not have appointed another guardian who exposed himself to a male police officer in 1984.

Prospective guardians don't have to prove their financial or organizational skills.

If they did, judges might have rejected a guardian who had trouble balancing his own checkbook. He's now suspected of stealing $9,200 from one ward. Another former ward is suing to recover $70,000 he claims was lost through the guardian's financial bungling.

Guardians are bonded and have to file an inventory of the ward's property. But the inventory isn't due in court until 60 days after the guardian is appointed.

In the interim, "It's theoretically possible for a guardian to wander into a safe deposit box, discover $50,000 in cash, shove it in his pocket and nobody would ever know," says St. Petersburg lawyer Lauren Sill.

Edith Stewart's guardian wound up $230,000 richer.

Last year, Mrs. Stewart's brother signed a petition to have her declared incompetent. He was appointed guardian and moved her from Clearwater to Orange County. Four months later, Mrs. Stewart signed a new will that named him as sole beneficiary. Her previous will would have left him nothing.

Mrs. Stewart died of cancer shortly afterward. A judge in Orlando approved the will without Pinellas County officials ever knowing. Disowned relatives found out too late to dispute the validity of the new will. The brother denies any wrongdoing.

These are the only required checks made on a guardian's work:

- A brief summary of the ward's care filed once a year in court.
- A brief, annual letter from any doctor to reaffirm the ward's incompetency.
- A judge's written approval before a guardian can collect fees or legally make major financial transactions, such as selling a ward's home or liquidating stocks.
- An annual accounting of the ward's finances. These accountings are not sub-

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jected to rigorous auditing.

"It is really a cursory, financial kind of oversight. And if you think you can't fudge on those figures, you're crazy," says Patricia Bell, an area supervisor for the Florida Department of Health and Rehabilitative Services.

The system doesn't protect wards from personal neglect, either.

Two months after a fire burned through the ceiling of a St. Petersburg house, social workers found a ward named Henry McIver still living there without edible food. McIver's guardian had not checked on him and didn't know there had been a fire.

Lots of people can, and sometimes do, act as informal watchdogs.

Guardianship attorneys, social workers, nursing-home attendants, boarding-home managers and guardians themselves can bring abuses to a judge's attention.

But sometimes they don't. Some have little incentive to do so because they are entwined in webs of self-interest.

One lawyer has persuaded judges to appoint these people as guardians: An assistant in her law office, a social worker who helped steer cases her way, and a boarding home manager who profited from housing his own wards. The guardians in turn hired the lawyer to perform the necessary legal work on their cases.

Another lawyer recommended guardians including his mother-in-law and people working for his law office — guardians who then retained him to do their legal work.

Changes are being discussed at both state and local levels. Some would cost money.

"We can go just as far as the public is willing to go," says Pinellas Circuit Judge Robert E. Beach. "But it's been shown time and time again: They don't want to spend the money."

Without reform, wards of the court will keep losing their rights with little legal or medical scrutiny. They will keep getting guardians of unknown repute. They will keep risking neglect or abuse in a system ill-equipped to enforce its promise of quality care.

Some think the wards deserve better.

"There's no room," Judge Penick says, "for anything less than perfection."

— Deputy Metropolitan Editor Robert Hooker contributed to this report.

Who are the wards?

In Pinellas they tend to be female, white, elderly and not particularly poor or wealthy

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

A tiny mobile home in Largo cooked under a June sun, its windows shut. Inside, social workers found Sara Mohr, 88, living alone in 120-degree heat. She refused to use her fan because of the expense. Her last electric bill was $17.

In downtown St. Petersburg, a 74-year-old woman named Carol wandered barefoot in pajamas into the January night, screaming and banging on doors. Neighbors said she threatened them, refused to pay her rent and claimed to be the Pope. She scrawled notes on her neighbors' mail, such as, "Chop up and put Nancy in closet."

In Clearwater, 79-year-old Frances fell in her apartment. Neighbors found her two days later, still on the floor. At the hospital she thought she was in a hotel. She knew she was married, but forgot where her husband lived.

Because of their frailties, these women were assigned guardians. Theirs were among 1,081 Pinellas County guardianships established in 1985.

The women are typical of Pinellas wards, who tend to be elderly, white, female and not especially wealthy or poor (see chart, right).

Some guardianships are set up to protect the money of children until they're adults. Others are started voluntarily by mentally alert adults who have grown too feeble to manage their estates alone.

But most involve adults who are declared incompetent, stripped of their civil rights and given guardians to direct their lives.

In ways that are often pitiful, these mentally confused people can menace themselves or others around them. Without supervision, they are easy targets for attackers and swindlers.

They come from diverse backgrounds.

Pinellas wards include former businessmen, ministers, housewives, artists, police officers, nurses, dancers, lawyers, teachers...

One is among the richest men in the county. Retired banker and rancher Hubert Rutland is close to 90 years old. He is worth about $80-million, but understands little of what goes on around him.

Another ward is a former Harvard professor who now can't remember her guardian's name. Still another was a doctor for almost 20 years before mental illness forced her to stop her practice.

Some people are desperately ill by the time they are declared incompetent. Others have drawn the system's attention only after outlandish incidents.

Floyd W. Chrysler, 84, drove to Ocala last year, got lost and had to be sent home on a bus. One bank closed his account after 26 overdrafts in one year.

Sara Ann Sherrod, 38, a mentally ill woman, was declared incompetent after being arrested and jailed for stabbing her husband.

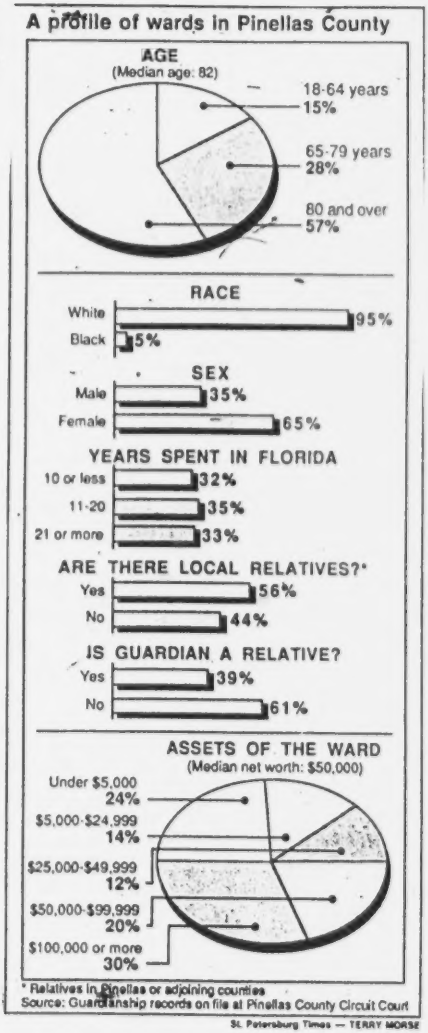
Reta Anderson, 80, let her faucet run for a month before the city shut off her water supply. She went two more months without realizing she had no water. Her house was thick with stench and infested with rats.

Some incompetent people are discovered after they have risked or suffered financial exploitation.

Alfhild Johnson, an 81-year-old widow, was declared incompetent after paying $10,000 to a Clearwater car dealer for a 1981 Mercury Cougar. According to her lawyer, that was twice the car's market value. Mrs. Johnson had neither a driver's license nor liability insurance, so a salesman drove her to the bank for her money, the lawyer says.

Gladys Fredrickson, 76, wrote a $28,000 check to a 26-year-old man two weeks before she was declared incompetent. The man has been charged with exploiting her.

"Guardianship is very extreme, and I hate to see it happen to a person," says St. Petersburg lawyer Rebecca Morgan, a specialist in legal problems of the elderly. "It's a last resort and it has to be used a lot."



The procedure for setting up a guardianship

St. Petersburg Times Staff Writer

Guardianships are set up quickly and can totally change the way an incompetent person lives. Once appointed, a guardian has supreme control over a ward's lifestyle and finances, with little supervision.

Here are the steps required in Pinellas County:

■ **The petition.** A petition is filed in probate court. It contends a person is incompetent. A relative or any three Florida citizens can file it. A hearing date is set.

■ **The layman exam.** A citizen — known as a layman examiner — takes the petition to the would-be ward. This layman asks whether the person wants a lawyer and sometimes observes his living conditions and functional skills. A lawyer is appointed if the person wants but can't afford one. The layman's report goes to the court.

■ **Psychiatric exams.** Two psychiatrists visit at separate times. They diagnose the person's mental state and recommend whether he be found incompetent. Their reports go to the court.

■ **Adjudication.** A judge reviews the reports and finds the person competent or incompetent. The petitioners' lawyer always attends this public hearing. It is usually less than two weeks after the petition is filed. The would-be ward rarely attends or has a lawyer present. There is seldom any testimony. Most are declared incompetent.

■ **The appointment.** The petitioners' lawyer nominates a guardian for the ward's personal care and a guardian for his finances. Usually it's the same person. Barring objection, the judge normally approves.

■ **Early guardianship.** The judge sets a bond to protect the ward's money, based on an estimate of the ward's assets. Within 60 days, the financial guardian files an inventory of the ward's holdings, and the bond may be adjusted.

■ **Supervision.** The guardian is in control and most actions require no court approval. There are no specific standards for the ward's personal care. However, a judge must approve such things as property sales, extensive home repairs, the filing of lawsuits, the borrowing of money. Each year the court requires the guardian to provide a written summary of the ward's care, a doctor's letter reaffirming the ward's condition and an accounting of the ward's finances.

■ **Restoration.** Any relative or friend may petition to have a ward's rights restored. The petition must be accompanied by at least one doctor's report saying the ward is now competent. At a hearing, a judge decides whether the ward's competence should be restored. If so, the person's rights are immediately reinstated. It rarely happens.

The judges

Some are thorough, but others exercise little oversight

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

It took two minutes for an 82-year-old woman named Adele to lose her civil rights.

It happened at a court hearing in St. Petersburg last month, but Adele wasn't there. Neither was the man appointed to be her guardian.

Nobody at the hearing talked about any plans for Adele. There was a doctor's report that suggested putting her in the hospital for tests, but that wasn't discussed either.

Adele didn't have a lawyer to represent her. Nor had she met the lawyer who told the judge she needed a guardian.

And, as often happens, the judge declared Adele incompetent and appointed her a guardian without demanding more information.

Judges control the thoroughness of incompetency hearings. They make the final decisions. They not only decide who becomes a ward, but also can influence what kind of care the ward is supposed to get.

Yet there is no set of standards for judges to follow. Some judges are thorough. Others exercise little oversight when making decisions that have profound effects on people's lives.

The *St. Petersburg Times* attended dozens of incompetency hearings during 1986. A few were protracted affairs with lengthy testimony. But many were like Adele's hearing — a couple of minutes worked into the judge's calendar just before lunch.

"It's the easiest thing in the world for somebody to simply be declared incompetent," says St. Petersburg lawyer Gardner Beckett.

In Adele's case, some important details about her never came up at her hearing:

- It was assumed that she was in a nursing home. But it turned out that she was still in her filthy, unkempt house in Gulfport.
- She refused to cooperate with a court-appointed examiner sent to her home to determine whether she wanted a lawyer. "She would not answer the question," the examiner wrote in his report. So, she got no lawyer.
- Both court-appointed psychiatrists who examined Adele deemed her incompetent. But one reported that "hospitalization would be necessary to rule out or determine any physical problems aggravating her mental condition." His suggestion never came up at Adele's hearing. (See transcript of hearing below.)

The judge in Adele's case was Robert E. Beach, who has handled guardianship cases since October.

Beach said he didn't need the guardian at the hearing because he trusted the recommendation of guardianship lawyer Lauren Sill. "If I can't trust the lawyer, then I'm in a bad spot."

Beach said he doesn't consider further medical testing unless at least one court-appointed psychiatrist thinks the ward is competent. "In retrospect, there wasn't anything to say that (Adele) was not incompetent."

However, the judge said he was "not happy" to learn he was misinformed about Adele's whereabouts, and was "concerned about the fact that the attorney and the guardian hadn't been out to see her." He demanded written reports from Sill, the guardian and the layman examiner after the *Times* raised questions about the case.

Sill said she assumed that Adele had already been removed from her home.

"I made a mistake," she said. "That is, in all due modesty, the first time I can remember making a mistake in that regard."

Brief and cursory

Beach succeeded Pinellas Circuit Judge Maynard F. Swanson, who presided over incompetency hearings until October. Swanson's sessions were often as brief and cursory as the hearing for Adele.

Swanson did not ask guardians to attend. Nor did he pose many questions, relying on lawyers handling the guardianships to tell him what he needed to know.

"I confess, sometimes I may not have asked enough questions," Swanson says. "I could have spent more time questioning guardians, and perhaps I should have."

His predecessor, Judge Robert Michael, said he, too, relied on lawyers to volunteer information. The lawyer's "obligation is to represent the ward's rights," Michael says.

It's hard for judges to be more aggressive under the present system, Swanson says. Thorough hearings might take more court-appointed lawyers, more court time, more judges, more thorough examinations and more testimony.

In other words, more expense.

"Unfortunately," Swanson says, "it all comes down to money."

'A sterile office'

Operating under the same system, however, two other judges were able to conduct more thorough guardianship hearings.

When Judges Thomas E. Penick Jr. and Jerry Parker handled guardianship cases, they usually demanded to see the guardian and hear his plans for the ward's care.

"I wanted them at the hearing every time they got a ward," says Penick, who is now assigned to criminal court. He says he insisted that all guardians meet their wards before coming to court.

Parker succeeded Penick and conducted guardianship hearings until October. *Times* reporters randomly attended Parker's hearings and found him to be equally rigorous.

In almost every hearing monitored by the *Times*, Parker required the guardian to attend.

He made sure the guardian had read the court-appointed doctors' reports. He made sure the guardian understood his duties. He asked about plans for the ward's care. And he asked whether anyone disputed the need for guardianship.

"I think the judge needs to be satisfied that he knows enough," Parker says. "It allows one to rest easier knowing there are no disputes among the people involved."

Penick says it's the judge's job to demand the facts he needs.

"We're in a sterile office, and all we have is the information that is fed to us," he says. "The caseload can be heavy, but quality information, freely dispersed, needs to be given to us."

Two-minute hearing before the judge:

'That'll do it'

Adele's hearing was in the chambers of Pinellas Circuit Judge Robert E. Beach. State social worker Maryellen Alexanderwicz and lawyer Lauren Sill were present.

After Adele was found neglecting herself in a cluttered, foul-smelling house, Alexanderwicz signed the incompetency petition that brought about the hearing. Sill represented the petitioners who wanted Adele declared incompetent.

Here's how the two-minute hearing went:

Beach: "Have you met (Adele)?"

Sill: "No."

Beach: "Does she have a private attorney?"

Alexanderwicz: "If she does, she would not be aware of it. She is really very disoriented."

Beach: "So she needs a guardian?"

Sill: "Sounds reasonable."

Sill told the judge that Adele had no cash or other readily available assets to protect. Beach set the guardian's bond at $8,000.

Beach: "I take it this lady is bedridden?"

Sill: "In a nursing home. I don't know about bedridden. It's doubtful that she'll ever be able to leave again."

Beach signed papers declaring Adele incompetent and appointing a professional guardian from Largo to take care of her.

Beach: "That'll do it."

Sill: "Okay, sir."

Adele is now in a nursing home. Her guardian is arranging medical care for her, but says her condition is unchanged. Adele misses her house sometimes, the guardian says, but has adjusted fairly well.

One lawyer oversees guardianships of 350 people

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

The ritual repeats itself weekly.

It's 11:30 a.m. at the courthouse in downtown St. Petersburg. A stout lawyer with black hair walks into a judge's chambers. A few minutes later she walks out with one, two, sometimes three new guardianships.

At age 28, Lauren Sill is the unofficial queen of the county's guardianship system. She oversees the guardianships of about 350 incompetent people — far more than any other Pinellas County lawyer.

Have Sill's wards fared as well as her business?

Critics say not. Sill has recruited some guardians who turned out to be negligent, at least, and perhaps downright dishonest. Officials say she has collected fees without a judge's permission and missed deadlines for filing reports. Some former wards and guardians say she ignored their problems.

"Too many cases, too quickly. She just can't keep on top of them," says Dale Hyland, chief guardian at a charity organization Sill used to represent.

Her admirers say that Sill is a smart, businesslike lawyer. Patrick Caddell, a guardianship lawyer recently elected county judge, says, "Lauren is sharp. She has a lot of ability."

'Pipeline' from social workers

Sill graduated from Stetson University's law school when she was 22 and started her own law practice two years later. She says her personal income was about $48,000 last year — most of it from guardianship work.

"The reason I like guardianship work is it tends to be very unusual," she says. "You can bump into the *strangest* problems . . . It tends to make life a lot more interesting to me."

Sill gets most of her cases through social workers at private facilities and at the Florida Department of Health and Rehabilitative Services (HRS). In fact, a survey of south Pinellas guardianships requested during the first half of 1986 shows that state social workers referred 35 cases to Sill while only nine cases went to other lawyers.

The St. Petersburg Bar Association is looking into Sill's relationship with HRS. "There's the appearance of a pipeline," says lawyer Doug Williamson.

State social workers say that Sill will accept guardianship cases that other lawyers don't want, cases for clients who are obnoxious or too poor to pay fees. "Human nature is to go with somebody who is available," says Patricia Bell, an HRS supervisor.

In turn, Sill has hired as guardians some of the same people who referred cases to her.

One of them was state social worker Patricia Welhof. Welhof helped her establish guardianships for HRS clients, Sill says, then worked in her spare time as one of Sill's guardians.

Welhof says she took some charity cases as well as paying cases. In one guardianship, though, Welhof was paid $2,970 for 198 hours of work. That's $15 per hour — or more than twice what Welhof was making as a social worker.

A conflict of interest?

HRS supervisors say no. Robert Withrow, HRS administrative services director, says, "This is the cleanest case I've seen."

Welhof herself refuses to discuss most of her work with Sill, but says, "You wouldn't be a guardian if you were just interested in money."

Sill says that most of the people who refer cases to her are not hired as guardians. And when they are hired, she says, it is because they are qualified, not because they helped build the lawyer's practice.

"The fact that they are sending business to me is not even a factor," Sill says.

Too many cases?

Can one lawyer look after 350 wards?

"You have to look at the finished product," says Pinellas Circuit Judge Robert E. Beach. "Have the rights of the (wards) been protected?"

Judges trust guardianship lawyers to recommend honest and qualified guardians, but Sill is sometimes selective about what she tells judges about proposed guardians. She didn't tell judges that:

- One guardian had pleaded no contest to trying to have her husband killed.
- Another guardian did a poor job managing wards' finances. The guardian is now suspected of mishandling wards' money. One ward has regained his civil rights and is suing Sill, saying she did nothing to stop the guardian from squandering thousands of dollars of the ward's money.
- Still another guardian reportedly made money by housing wards in a boarding home he managed.

At the same time, Sill usually opposes people who want to be guardians for family members. In August, for instance, Sill persuaded a judge not to appoint a St. Petersburg man who wanted to be guardian for his 74-year-old father.

The would-be guardian, Richard Hans, has been a Lutheran minister for 20 years and has experience at counseling and bookkeeping. Sill says she feared he could not make tough decisions about his father's care; Rev. Hans plans to appeal the decision.

"I don't think she's careful enough in selecting guardians," says Fran Sutcliffe, an advocate for the elderly. "She may be too busy."

Sill says she has begun to screen guardians more carefully and demand more frequent financial reports. "The problems that I've encountered have always taught me something," she says.

But officials say the problems don't end with Sill's guardians. Sill herself has sometimes overlooked rules designed to protect wards, they say.

In some cases, Sill also has collected fees from wards' assets without first getting a judge's permission. Sill says the law allows that practice, but officials disagree. "She does it less now that court officials have gotten after her," says deputy court clerk Paul Cloninger.

Court clerks also say the lawyer received 155 citations this year for not promptly filing court documents. Sill responds that some reports were late because guardians didn't cooperate with her.

Other documents were filed but then lost by clerks, she says. "I've gotten many citations on work that I believe I've done."

St. Petersburg, Florida December 15, 1986

WARDS OF THE COURT

It is a hasty process with drastic results. It saves time and money — at the expense of individual liberties and medical caution. This is the system of establishing guardianships.

Guardianship begins when a judge declares a person incompetent to handle his own affairs. A guardian is appointed. The ward is left with no legal rights. Yet:

■ It usually happens at a brief, informal court hearing, usually just before lunch. Most of the time, no verbatim record is kept.

■ The judge relies on psychiatric tests that are often skimpy. Mistakes happen. There are few safeguards.

■ The ward seldom attends the hearing, rarely is represented by a lawyer and may not understand his right to have one.

■ The prospective guardian often is not at the hearing, and many times has never met the ward.

■ And the judge — the official with the authority to demand more answers — often asks few questions.

Today's stories examine this system.

Exams are often shallow

■ *Second in a series*

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

The experts were wrong about Florence Peters.

At 84, she was declared incompetent after two psychiatrists said she had a brain disease that could not be treated. But within eight months, Mrs. Peters' health improved and her competency was restored.

The experts muffed Lela Caris' case, too.

She was declared incompetent when psychiatrists said her mental confusion couldn't be treated. Today, Mrs. Caris is 92, plays the piano (see photo, left), takes walks, enjoys bridge, attends two church circles and has regained her rights. "They call me the miracle lady," she says.

And the experts were wrong about Mary, a 66-year-old Clearwater woman.

Mary was deemed senile and non-treatable. She was declared incompetent, but she recovered a few weeks later. Her competency was restored and she now lives independently in her own home. "It was just a brief emotional illness," she says.

These women and other Pinellas County residents lost their civil rights on the basis of court-ordered medical findings that were wrong.

The findings were wrong because the guardianship system does not require thorough medical testing.

Court-ordered competency examinations can be quick and shallow. They involve guesswork. Diagnoses are often reached without medical records. Sometimes they are conflicting. A few are based on brief chats with hostile people through screen doors.

Psychiatrists who conduct the exams acknowledge they can make mistakes.

"Most of the time we're pretty good," says Dr. H. E. Rubin of Gulfport, a 20-year veteran of competency tests. "Sometimes we miss."

Pinellas Circuit Judge Thomas E. Penick Jr. says he is troubled by the system's shortcomings.

"I am concerned about . . . going up to the door, talking for five minutes and coming back and saying a person's incompetent," Penick says. "You've got to have a more in-depth examination up front."

Yet Pinellas judges have routinely accepted the psychiatrists' reports anyway.

Are there safeguards?

Psychiatrists can ask judges for more thorough tests. But sometimes the judges pay little attention.

Guardians can take their wards to doctors for proper medical care. But sometimes guardians don't have enough expertise or medical information to make the right decisions.

The law guarantees each ward an annual medical followup to see if his condition has improved. But these exams are often perfunctory.

"There are no safeguards," says Dr. Theodore Machler Jr., a past president of the Pinellas County Psychiatric Association. "There are a lot of people in Pinellas County who are declared incompetent and have reversible conditions that are never discovered."

Conflicts of opinion

Judges, not psychiatrists, declare people incompetent during court hearings. In practice, though, the judges defer to the expertise of court-appointed doctors.

To begin the process, the judge sends a "layman examiner" to visit the alleged incompetent, notify the person of the court proceedings, assess the person's living conditions and ask if the person wants an attorney. (Please see story on opposite page).

Then the judge sends two psychiatrists, who are medical doctors specializing in mental disorders. They pay separate visits, diagnose the person's condition and make recommendations to the judge.

Finally, there's a hearing. It "usually takes five minutes or less," says Pinellas Circuit Judge Maynard F. Swanson. "All I have to do is look at the (psychiatrists') reports and look at the ward and make a determination."

The *St. Petersburg Times* reviewed all Pinellas County incompetency cases handled in 1985, and conducted a computer-assisted analysis of data from the first six months of that year. The study shows that:

- Incompetency petitions were filed on 408 persons. Only seven were found competent by the court.
- Judges ordered 827 psychiatric examinations. The same six doctors performed almost 90 percent of them.
- Many times, one psychiatrist diagnosed an irreversible ailment — such as Alzheimer's disease — but the other psychiatrist diagnosed a different, potentially treatable problem. This happened in about one of five cases. **(Please see illustration, this page).**

"Whenever there's a conflict of opinion on the diagnosis, that should be an area of concern," says Dr. George Warren, a Clearwater psychiatrist who performs competency examinations.

But despite the frequent disagreements, judges asked for a third psychiatrist's opinion in only 2 percent of all cases.

Easy to misdiagnose

The court-appointed psychiatrists must decide whether a grown person should be reduced to the legal status of a child. It is a tough job.

For starters, a host of treatable conditions can masquerade as senility.

Vitamin deficiencies, various drugs, diabetes, thyroid disorders, infections, depression, strokes, alcoholism — all can make people seem as if they're suffering from nontreatable brain disease.

More than one-fourth of elderly people who initially seem senile may have reversible conditions, some medical studies show. Psychiatrists who spoke with the *Times* guessed that 5 to 25 percent of Tampa Bay residents who seem permanently muddled may in fact have treatable conditions.

So it's easy to reach the wrong conclusion. Hostile patients, squalid surroundings and inconvenient hours often complicate the job of court-appointed psychiatrists.

The pay is low, too.

Psychiatrists in this area charge $90 an hour or more in private practice. In Pinellas County, court-appointed psychiatrists are paid $50 per exam — usually from the alleged incompetent's assets — with nothing extra for the time and expense of driving to someone's home for an examination.

"They'll pay $200 for you to go down to the jail and see some bum who's committed a crime to determine his competence to stand trial," says Dr. Daniel Sprehe of Tampa, where guardianship exams pay $75. "They'll pay $75 for you to go see if you can take away a guy's estate that he's spent all his life building. It's ridiculous."

The *Times*' survey found that almost 40 percent of the psychiatric exams in the first half of 1985 were conducted in private homes or boarding houses. That usually means there were no medical histories to study, no other doctors or nurses to consult.

Experts agree that, without the opportunity to consult records or colleagues, it is easier to make mistakes.

"In the home, you can say it's a dementia, but you can't say why," says Dr. James Adams, a Clearwater psychiatrist. "You have to have them in a hospital or have access to medical information. Quite frankly, there are times I'm glad when the judge has to make the final decisions."

Without sufficient medical records or background information, "it's a guess," says Sprehe, who is president of the Florida Psychiatric Society. "It's a good, educated guess."

'A one-way street'

The way the exams are conducted can also skew their outcome.

Sometimes the psychiatrists arrive unannounced at a person's home. Patients can get angry or flustered, affecting their appearance.

"It stinks. Some guy walks up to the door who they've never seen before and it upsets these old people," says Dr. Alfred Fireman, a Clearwater psychiatrist. "They don't know whether they're being held up or raped, and sometimes it's hard to tell the difference."

Sometimes it may be hard to understand what the stranger is saying.

Four of the six psychiatrists who conducted 90 percent of the 1985 exams were foreign-born, with pronounced accents.

"Relatives have complained that they didn't understand (the doctor) who was sent out," Judge Penick says.

"We have to rely on these doctors, and these are the doctors who are willing to serve," Judge Swanson adds. "It's not a good situation."

Occasionally, doctors reach conclusions about wary patients who won't even let them in the door.

In July 1985, for example, a 91-year-old St. Petersburg woman wouldn't let Dr. Ricardo Maribona into her house. "Patient examined through screen door as she would not let me in," his report said. Despite the limits of the exam, he diagnosed an Alzheimer's-related disease and recommended incompetency.

The woman had a guardian appointed for her.

Maribona declined to be interviewed when the *Times* called his office. In response to a list of written questions, Maribona sent a letter that did not directly address this case.

"My only comment is that the system works. The decisions made are never final" and can be reversed later, Maribona's letter says.

The prospect of misdiagnosis troubles mental health experts.

It's not just a question of the ward's competence. If misdiagnosed, the true cause of the ward's impairment might never be determined.

This could prevent effective medical care. Or it could keep a ward in a guardianship that is not needed, says Dr. Eric Pfeiffer, director of the Suncoast Gerontology Center at the University of South Florida Medical School and an internationally known expert on Alzheimer's disease.

"The implication," Pfeiffer says, "is that guardianship is a one-way street."

When psychiatrists are uncertain about their findings, they are free to say so in their reports to the court. They can suggest that the patient be sent to the hospital for more thorough testing.

"I will write on the exam, 'Needs medical evaluation,' " Dr. Adams says. "I would assume that the judges would try to insure that that occurs."

Dr. Warren says he recommends hospital tests

on about 20 percent of his reports. He, too, assumes the judges take heed.

But they don't always.

Two months ago, for instance, an 84-year-old Dunedin woman was declared incompetent. Warren's report said she was demented, but might be treatable. "Patient should be hospitalized for thorough medical and psychiatric evaluation . . ." he wrote.

At the woman's hearing two weeks later, Judge Philip A. Federico looked at the doctors' reports. Both recommended incompetency. "It seems to be unanimous," he said.

Warren's advice was not discussed by the judge. When asked about it afterward, Federico said, "I don't think that just the probability mentioned in the report was enough."

'Through the cracks'

Once declared incompetent, a ward relies on his guardian for health care. If the ward's condition improves, his competency can be restored.

But this seldom happens.

Psychiatrists' reports aren't provided to the guardians as a matter of course. And the annual medical exams required by law are often conducted by doctors who are not psychiatrists. Often they produce cursory reports of one or two paragraphs.

What's more, an ill-trained, inept or dishonest guardian can keep a ward trapped in a guardianship that is not necessary.

Clarence Knight, 91, was misdiagnosed, declared incompetent in July 1984 and hospitalized.

Doctors then found and corrected a vitamin B-12 deficiency, which can produce symptoms of senility. Knight quickly recovered.

But his guardian, George Chambers, did nothing to restore Knight's competency. Knight was kept in a boarding home, separated from his wife. Chambers sold many of Knight's belongings and mismanaged his finances before suffering a stroke himself.

Eleven months later, new guardians helped Knight regain his civil rights. Chambers committed suicide last February. Knight is suing the guardian's estate for damages.

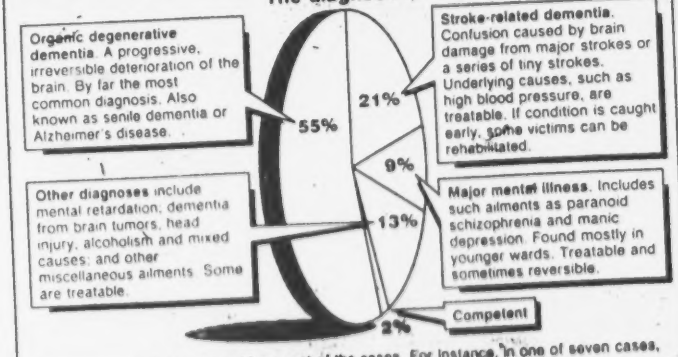
"It's going to be rare, but I would say it happens some every year," Dr. Sprehe says of the Knight case. "There is the potential of someone slipping through the cracks like that."

— Deputy Metropolitan Editor Robert Hooker contributed to this report.

Reasons for incompetency

In the first half of 1985, 401 persons were found incompetent in Pinellas County. Only seven were found competent. These diagnoses led to findings of incompetency.

The diagnoses


Organic degenerative dementia. A progressive, irreversible deterioration of the brain. By far the most common diagnosis. Also known as senile dementia or Alzheimer's disease.
55%
Stroke-related dementia. Confusion caused by brain damage from major strokes or a series of tiny strokes. Underlying causes, such as high blood pressure, are treatable. If condition is caught early, some victims can be rehabilitated.
21%
Major mental illness. Includes such ailments as paranoid schizophrenia and manic depression. Found mostly in younger wards. Treatable and sometimes reversible.
9%
Other diagnoses include mental retardation; dementia from brain tumors, head injury, alcoholism and mixed causes; and other miscellaneous ailments. Some are treatable.
13%
Competent
2%

Diagnoses conflicted in about 20 percent of the cases. For instance, in one of seven cases, one psychiatrist diagnosed an organic degenerative dementia, which is considered untreatable, but a second psychiatrist diagnosed a possibly treatable stroke-related dementia.

The doctors

Diagnoses can vary according to the doctor. At right is a comparison of diagnoses made by psychiatrists Pedro Lense and Hector Corzo in the first half of 1985. The bottom line shows combined figures for all court-appointed doctors.

	Organic degenerative dementia	Stroke-related dementia
Lense	79%	1%
Corzo	2%	77%
All doctors	55%	21%

Corzo declined comment on the figures. Lense, now living in Gainesville, said it was impossible to comment because he no longer has the case files.

The steps to guardianship

1. **A PETITION** is filed alleging that a person is incompetent.

2. **A LAYMAN EXAMINER** delivers the petition to the alleged incompetent, assesses the person's living conditions and asks if he wants an attorney.

3. **TWO PSYCHIATRISTS** visit the alleged incompetent at separate times. They diagnose his mental condition and make recommendations to the court.

4. **AT A HEARING**, a judge reviews the reports of the psychiatrists and decides whether the alleged incompetent should become a ward of the court.

Here are some of the questions used on exams

St. Petersburg Times Staff Writers

Court-appointed psychiatrists ask an array of questions when trying to determine whether someone is incompetent.

The questions can determine that a person is confused, but cannot pinpoint the cause. Nor can they measure a person's capacity to take care of himself.

Here are questions commonly used in Pinellas County competency examinations:

- How old are you? What is your birth date?
- What is your address? Your phone number?
- What is the date today? What day of the week?
- Who is your doctor? Are you on medication?
- Do you have a will? Who are the beneficiaries?
- What did you have for breakfast?
- What is the name of your bank?
- Name the last three United States presidents.
- What was your mother's maiden name?
- Subtract 7 from 100 and keep subtracting 7 from each new number.
- How much would a dozen eggs cost if each egg cost 25 cents?
- How many nickels are in $1.35?
- How are an orange and a banana alike?
- What does it mean when someone says, "People who live in glass houses should not throw stones?"
- What does it mean when someone says, "The grass is always greener on the other side?"

Few represented by lawyer at competency hearings

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Like most people headed for guardianship, Ruth Perunko had nobody looking out for her civil rights.

At 74, she had grown testy and incontinent. She crabbed at the social workers who came to her door with offers of help. In time, three of them signed a petition to have her declared incompetent.

A judge sent two psychiatrists who agreed that Mrs. Perunko was senile. A date was set for a hearing, where she almost certainly would have been declared incompetent.

But then her daughter hired a lawyer. He won a postponement of the hearing.

"She had some physical disabilities, but she was competent," says the lawyer, Thomas Reynolds of St. Petersburg. He scheduled a more complete examination for Mrs. Perunko.

As a result, she was found competent enough to live at home, with some help. A judge threw out the incompetency petition after she volunteered to let a property guardian manage her money.

Legal help enabled Mrs. Perunko, in spite of her problems, to keep some control of her own life. She is an exception.

Despite the sweeping consequences of incompetency, only about one in 10 Pinellas County residents is represented by a lawyer during the proceedings, a *St. Petersburg Times* investigation shows.

"Nobody represents the alleged incompetent," says St. Petersburg lawyer Richard T. Earle Jr. "It's the only time I know of where you can deprive a person of his liberty for an extended period of time without representation."

A one-sided system

The court system guarantees lawyers to all persons accused of serious crimes.

But the guardianship system, which removes a person's civil rights, normally gives lawyers only to people who explicitly request them. Those who are too sick, too bewildered or too compliant to speak up get no legal counsel.

"If a person truly is incompetent, how can that person knowingly waive the right of representation?" says St. Petersburg lawyer Rebecca Morgan.

Usually the only lawyer at a competency hearing represents the people who suggested the guardianship in the first place. Judges usually trust that same attorney to protect the rights of the alleged incompetent.

This is why, at many hearings:

- Nobody questions the reports of court-appointed psychiatrists.
- Nobody challenges the need for guardianship or suggests less drastic alternatives.
- Nobody insists that the ward or the guardian be present.
- Nobody asks guardians about their qualifications or their plans for the wards.

And it may help explain why only seven of 408 Pinellas County incompetency petitions were dismissed in the first six months of 1985 — the span from which the *Times* collected data from court files.

What does it matter?

It's a problem of national concern. Last summer, the American Bar Association gathered judges and legal professionals from 26 states to recommend new guidelines for guardianship.

Their report suggests that lawyers "be appointed in every case . . . If private funds are not available to pay counsel, then public funds should be used."

Some think that would cost too much.

But in Dade County, the judge always appoints a lawyer before a person's competency hearing, at no cost to taxpayers. Selections are made from a pool of attorneys who offer their services and agree to work for free if the client has no money.

"By not providing an attorney from the start, you are opening a potential Pandora's box," says Frank Repensek, executive director of the Guardianship Program of Dade County Inc., a nonprofit agency that serves impoverished wards. "If something goes wrong, how are you ever going to find out about it?"

Even when the ward is obviously incompetent, Repensek says, an independent lawyer can make sure a good guardian is chosen.

But few local experts say legal help is always needed.

"If you automatically do that, you're going to have a bunch of attorneys representing comatose people in nursing homes," says Pinellas Park lawyer Patrick Caddell.

And after all, skeptics ask, aren't most people declared incompetent because they *are* incompetent?

In most cases, yes. The troublesome question is this: Would some people without lawyers have been found competent if they'd been represented?

"I think most people who are judged incompetent probably are incompetent, just like most people who are accused of a crime probably are guilty," says St. Petersburg lawyer Gardner Beckett. "But it makes a whole lot of difference when you convict somebody who is not guilty, and that's the problem we have."

Making a difference

As several recent cases show, lawyers can make a great difference. Here are three examples:

- **Margo Johnson**, a 37-year-old alcoholic from Palm Beach who was a patient at Anclote Manor psychiatric hospital. Last January, her wealthy parents signed an incompetency petition to force her to remain there. Johnson hired Tampa lawyer Robert Nutter to contest the petition.

After two days of conflicting testimony from seven psychiatrists, Pinellas Circuit Judge Thomas E. Penick Jr. found Ms. Johnson competent. "She has an alcohol problem," he ruled, "but she does not meet the criteria for incompetency."

- **Clelah Swarts**, an 82-year-old Seminole woman. Last July, two court-appointed psychiatrists deemed her incompetent, but she had St. Petersburg lawyer D'Arcy Clarie working for her.

Clarie persuaded Pinellas Circuit Judge Maynard

F. Swanson that a voluntary financial guardian should handle Mrs. Swartz's money. And the lawyer submitted a doctor's letter saying Mrs. Swartz was competent enough to make that decision.

The judge declared her competent.

■ **Hazel Wilson**, a 90-year-old St. Petersburg widow. She was so scared last year by incompetency proceedings that she ran away to West Palm Beach.

Patrick Caddell was appointed to represent her. He interviewed people who knew Mrs. Wilson. He had her evaluated by social workers. He told Pinellas Circuit Judge Robert Michael she was competent and that "her primary need is for companionship."

Michael agreed with Caddell, despite two court-appointed psychiatrists who recommended incompetency. Caddell's services cost $150.

"I think this is an example of how it should work," Caddell says. "This case had a good ending. And the cost-effectiveness was good."

Layman examiners are key contacts with system

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Charles Burke, left, and Thomas Faulkner, right, are Pinellas County's layman examiners. Burke works the area lying south of Ulmerton Road. Faulkner covers the northern part of the county.

Charles Burke is a former circuit court judge. Thomas Faulkner is a retired sheriff's deputy.

They are the first contact most wards have with the guardianship system.

The work they do can influence whether people get lawyers at incompetency hearings. And lawyers, in turn, can affect everything from the thoroughness of a person's hearing to the quality of care given by the guardian (**see story above**).

Burke and Faulkner are Pinellas County's layman examiners. The court system hires them to visit would-be wards, deliver them copies of court documents and gather vital information.

Burke works the area lying south of Ulmerton Road. Faulkner covers the northern part of the county. They're paid $50 per visit, usually from the ward's money.

It's the layman's job to make sure the alleged incompetent knows he's entitled to a lawyer — and to find out whether he wants one.

What records show

The *St. Petersburg Times* analyzed data from more than 400 reports submitted by layman examiners to judges during the first half of 1985.

Statistics show that about 11 percent of the people they screened wound up with lawyers. Most of those people had specifically requested that a lawyer be appointed.

But more than half the people facing guardianship either would not or could not answer the layman examiners' questions. Only 1 percent of those people received a lawyer (**see box**).

> *"I end up finding a lot of people who just didn't understand what was going on."*
> — Gulfcoast Legal Services lawyer Mishele Schutz

"Here they (prospective wards) get this piece of paper. They don't know why they're getting it," says Gulfcoast Legal Services lawyer Mishele Schutz about the legal documents delivered by the layman. "They're totally flabbergasted and someone asks them if they want a lawyer. I end up finding a lot of people who just didn't understand what was going on."

"I usually get an answer unless someone is comatose or doesn't have any idea of what I'm talking about," Faulkner says. "If they're a little bit skeptical, and they're not sure what they want to do, I'll have the court appoint them an attorney."

Burke won't speculate on the results of his work. Nor will he discuss specific cases.

"I'll just stand on what the record reflects," he says.

The record reflects, for example:

■ That 87-year-old Diana Sereda spoke limited English and insisted on talking to Burke in Russian.

■ That 76-year-old Marie Hebel would not let Burke inside and was interviewed through a crack in her door.

■ That 65-year-old Jessie Dadswell would not open her door, so Burke left her hearing notice tucked inside the screen door.

In each case, Burke reported that he got no reply from these women. None had an attorney appointed for her.

Burke says he tries to have thorough conversations. If a person is hostile, "I talk to them

Layman examiners: Who gets a lawyer?

Layman examiners ask potential wards if they want legal counsel and report the replies to a judge. The responses can greatly affect whether people are represented by attorneys at their incompetency hearings. Here are the replies the examiners got — and the results.

22% said: "I do not want an attorney." Of those,
3% wound up with lawyers anyway.

16% said: "My attorney is ... " Of those,
23% wound up with lawyers.

6% said: "I want but cannot afford an attorney." Of those,
92% wound up with lawyers.

56% either could not or would not answer the question. Of those,
1% wound up with lawyers.

Source: Pinellas County records, first half of 1985

St. Petersburg Times — TERRY MORSE

through the front screen, the best that you can do."

Functional assessments

Pinellas County layman examiners have another responsibility.

It's called a functional assessment, but it routinely gets short shrift.

Layman examiners are supposed to observe how well prospective wards are getting along. Are their homes in good repair? Do they drink too much? Can they cook, clean, bathe, take medicine, shop and pay the bills? Can friends, relatives or social service agencies provide any help? Is guardianship really needed?

Burke's reports often skipped over those questions. "I'm not a social worker," he says.

Faulkner's reports tended to be more complete.

"I think a lot of people are put into nursing homes because nobody cares," he says. "I'd say maybe 20 percent of them could function in their homes if they had someone to check on them."

Better functional exams would probably cost more money, but some think it would be well spent.

"The fiscal and human costs of an incorrectly done guardianship are higher," says Beverly Burton, a St. Petersburg gerontologist. "Yes, they may be mentally incompetent, and, no, they may not need a guardian."

ST. PETERSBURG TIMES ■ TUESDAY, DECEMBER 16, 1986

WARDS OF THE COURT

Guardianship: abuse, neglect for some

■ *Third in a series*

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Hostile and delirious, a 72-year-old man lived in a burned-out house and drank rainwater from a dirty bucket. His guardian had lost track of him.

Forced to live apart from her husband, an 85-year-old woman died in a strange bed. Her husband and her guardian missed her funeral. They were vacationing in New York, soon to be married.

Denied control of her life savings, a 76-year-old woman watched in anguish as her daughter became her guardian and drained her $90,000 estate. The squandering lasted two years before court officials noticed.

Like these three people, thousands of other Floridians are declared mentally incompetent each year. Judges remove their civil rights and assign them guardians.

With this act comes an implicit promise — to protect wards from physical and emotional harm, from financial exploitation, from self-neglect.

Often the promise is kept. But Florida law and some judges do little to guarantee it won't be broken.

There are some safeguards. Florida law bars convicted felons and minors from becoming guardians. Guardians must file annual reports on wards' finances and personal care. If the ward's money is mismanaged, the guardian's bond sometimes covers the loss.

But these measures are sometimes not enough to keep a guardian from harming a ward through neglect or greed.

"There is a large element of trust in the guardian," says Lauren Sill, Pinellas County's busiest guardianship lawyer. "There is a lot of room for individual interpretation; there is a lot of room for somebody to be an outright thief."

Consider:

It's not hard to become a guardian. Would-be guardians don't have to undergo background checks, don't have to demonstrate skill at handling wards' finances, don't have to present plans for helping a ward regain control of his life. Guardians often don't attend the brief hearings at which judges appoint them.

Once appointed, guardians have few checks on their power. Unless someone complains, court officials do not closely audit cases for theft or mismanagement. Officials seldom check to see if guardians regularly visit wards, house wards in decent surroundings and seek appropriate medical attention for wards.

If nobody notices a problem, abuse can go on for months, even years. In the end, a ward's fate usually depends on the good intentions and ability of his guardian.

Many wards live happily under the care of skilled and compassionate caretakers. Others, however, suffer at the hands of greedy or negligent guardians. Today's articles, on pages 12-A and 13-A, tell some of their stories.

— Deputy Metropolitan Editor Robert Hooker contributed to this report.

'I am not a criminal . . .'

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

This is a look at guardianship through the eyes of a stubborn, proud and very sick woman.

Sue is 46, a University of Michigan medical school graduate, a doctor for more than 15 years. She says she has been mentally ill for about seven years.

Her manic disorder can make her wild. When it flares, she spends like a queen, brings strangers home and threatens people. In calmer moments she is intelligent, perceptive and wry.

Sue's ex-husband and son live in Indiana, her parents in Michigan. She was living at St. Petersburg Beach when she was declared incompetent last March. Her net worth was about $200,000.

Angry, she beset her doctors, lawyers and guardians with calls and letters. On June 20, after reading guardianship stories in the *St. Petersburg Times*, she wrote the first of 120 letters to a reporter. The longest was 84 pages.

Sue shuttled between Pinellas County boarding homes and mental hospitals. "I feel like a checker on a checkerboard," she wrote.

Most letters came from Horizon Hospital, a psychiatric hospital in mid-Pinellas. Many parts were strange and rambling; others were lucid. Here are excerpts, edited for brevity.

■■■

Friday, June 20

Guardianship means if you are rich you are incompetent and if you are poor and in debt you work for a living.

Guardianship means walking 10 miles to your bank where you have a large sum of money and getting $10 from your trust officer.

Guardianship means all your belongings are in storage so you have no clothing or personal effects.

Friday, July 4

I am isolated and have no more friends or relatives in Florida. They say they will get me "new" friends, etc., but I

Please see **SUE** 13-A

pg 77

have not seen anyone. So I am very lonely.

My intelligence and knowledge is dissipating — all the 15 years of higher education, college, medical school, internship, residency and years of medical practice will be gone. My ideas are solely on pure survival. I am getting good at begging for quarters.

Please help me to leave Florida. I have been victimized enough here.

Tuesday, July 15

You develop a terrible hatred for psychiatrists when you are in the system. When I was a doctor I always thought they were inferior because they never did physical exams on patients, and missed many conditions that had psychiatric symptoms.

Why don't psychiatrists do lab tests, X-rays and physicals, too? After all, they did go to medical school.

Friday, July 18

They have an outing to the beach today, and I am not able to go because I am an involuntary patient and incompetent. So I said, why cannot I see the ocean and the beach too? I am a human being.

Sunday, July 20

I was just talking to the lifeguard (at the hospital pool). I said if you are incompetent at least no one will sue you or put you to death in the Florida electric chair.

I am not a criminal but I have been treated worse than most criminals. If they treated criminals the way they treat the incompetent, there wouldn't be any criminals in this state.

Monday, July 21

It is too bad that in this system the only one you dare express your crazy thoughts and feelings to is a newspaper reporter.

Tuesday, July 22

The guardian grabbed my hand today and said, "You are trembling." I said, "Of course I am, I have been since I was declared incompetent."

Last night my mother called and she is at her wit's end — she says she wants to commit suicide. She really doesn't mean she wants to commit suicide but is fed up with the system and what it is doing to me and my family.

As the guardian was here yesterday and casually flipped through my $200,000 trust account, I thought, all that money and none of it is doing me or my parents any good.

Thursday, July 24

I was supposed to have two doctors come to restore me from incompetence. I am *definitely not incompetent.*

I did not get the doctors. Can't understand why they have not come. It seems somebody is dragging their feet here.

Saturday, July 26

I cannot tell you how much worse my mental condition is since I have been a "thing" of the court's without rights. I want to die, I pray to die. There is no happiness in life — my life is over. I would prefer death to living as a guardianship zombie the rest of my life.

Saturday, Aug. 2

It will be so nice to be free again. I think of my crystals in storage, my books, my records, etc.

What is my crime? It seems like the people I am surrounded by are a lot sicker than I ever thought of being. I have money and they don't. That is the difference.

They are extremely intolerant of me and very unsympathetic of my situation. They call me a bag lady. They are not Albert Einstein.

Sunday, Aug. 3

My mother called, and said the state of Michigan is changing its guardianship laws because they are finding them too restrictive and detrimental to the older patients. They will be having more temporary guardianships, and limited-power guardianships. There will be a periodic review of each case.

Why doesn't Florida update its guardianship laws?

Friday, Aug. 15

I only have a few days left on my long-term Medicare. In other words I may go bankrupt eventually through hospitalization.

I have a couple of friends and ex-patients who want to smuggle me out of the state as a last resort. I would have to leave behind my earthly possessions but what are possessions when these people are bent on killing you?

Monday, Aug. 25

Maybe I should live in a state hospital, no one wants to help me take care of my disease. My mother does, but she is 75 years old and how long will she last?

Thursday, Sept. 18

I have found these court people to be true hooligans — trash.

The guardians are overworked and underpaid for their jobs. Thus there is a lack of services to the wards. Lack of money or transportation to the doctor or for food can spell death for many.

The laws need to be changed.

■■■

On Sept. 29, Pinellas Circuit Judge Maynard F. Swanson signed an order returning Sue to Michigan. She had undermined all offers of help here, her lawyers said.

Swanson kept her in guardianship, but her mother will control her immediate care. Sue will be on an allowance. If she grows unruly, she will have to return here.

Tuesday, Sept. 30

I appreciated your attending the hearing yesterday. I believe Judge Swanson is a wise, clever and humorous judge. I could not have written a better order myself. I believe Swanson knows more than he says. Thank God!

As they say, "Come to Florida on vacation, leave Florida on probation."

Love, Sue.

Four cases where the system let down wards . . .

'It upset her a lot'

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Kate always handled her own business. She kept the books for the Wisconsin ice cream store she and her husband ran. She managed their money when they moved to Pasco County almost 20 years ago.

Then her husband died. She grew paranoid and confused. In 1980 a judge appointed her only daughter as her guardian. (Kate's real name is not being published at her request. However, she and her guardian gave permission for photos.)

At first, Mary Lou Charleboix seemed to do a good job. She settled her mother in a boarding home. She sold property to pay a debt. She got court approval to spruce up her mother's rental properties.

Then the system lost track of Kate and her guardian. By the time officials suspected trouble, two years of financial misdeeds had passed unnoticed.

According to a report by a court-appointed investigator, Charleboix had:

Moved with her boyfriend into Kate's home without paying rent and utilities; borrowed about $4,800 of her mother's money; spent parts of a $17,000 loan on unauthorized expenses and used her mother's credit to borrow another $16,000 — all without court permission.

Court records state that Charleboix also paid $7,000 of her mother's money to repair a house for a friend — again without a judge's approval.

Finally, in March 1984, Pasco Circuit Judge W. Lowell Bray ousted Charleboix for "abuse of her powers and mismanagement of the ward's property." He appointed new guardians.

Charleboix fought her mother's guardians until early 1985. By that time, Kate's $90,000 estate had been halved. Fees paid to lawyers investigating and solving the problems cut even deeper.

"The real tragedy too was that all this litigation really consumed a lot of money that should have gone to her care," says the investigator, lawyer Peter O. Brick. "By the time it was through, there wasn't much left."

The problems in Kate's case came to light after officials examined the financial accountings submitted by her guardian. Money might have been saved if those financial reports had been filed earlier.

Florida law requires guardians to file an accounting every year, but for two years Charleboix failed to file one. The attorney paid to represent Kate didn't ask a judge to demand those reports. Court officials in Pasco County didn't ask for explanations.

"A lot can happen in a year. And for that matter, more can happen in two years if an accounting isn't filed," says Richard C. Williams Jr., a Pasco lawyer who later became guardian of Kate's property.

Kate's daughter apparently moved from Florida after being removed as her mother's guardian. The *St. Petersburg Times* was unable to contact her through letters and phone calls.

Attorney James C. Campisi was paid more than $10,000 to handle Kate's guardianship, court records show. He says he wasn't worried when Charleboix failed to file the required financial reports.

"There was no red flag or anything to suggest any kind of wrongdoing," Campisi says. "If anything, I took a perspective that she was doing everything in the best interest of her mother."

Kate's new personal guardian says the damage wasn't just financial.

"It upset her a lot, much more than she would admit," says Lutheran Ministries guardianship coordinator Dale Hyland. "The daughter was cold and calculating."

Kate now lives in a St. Petersburg boarding home. A slender woman with milky blue eyes, she knits afghans and goes out with a Lutheran Ministries volunteer for lunches of fried chicken and cole slaw.

Kate likes to reminisce about fishing trips with her husband, but her voice turns fragile when she talks about her daughter. She hasn't seen her daughter for about two years.

"I'd like to know where she is," Kate says.

'All she wanted was her husband'

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

In more than 30 years of marriage, Lucian and Florence Peters managed things alone. They saved, retired to Florida, took walks and held hands.

"Oh God yeah, she loved him," says Mrs. Peters' sister, Catherine Knauf of New Jersey.

By and by, they needed help. They reached their mid-80s. Florence Peters suffered a series of strokes. Lucian Peters remained clear-headed, but health problems overwhelmed him.

The couple turned to an acquaintance from church. At first, Joan Gradsky simply shopped and cooked for them.

Then, in September 1983, a judge declared Mrs. Peters incompetent, making Ms. Gradsky her guardian. Mr. Peters was competent, but he voluntarily gave Ms. Gradsky control of his money through a limited guardianship.

The guardianship lasted only seven months, but it marked the beginning of radical changes in the Peterses' lives.

Ms. Gradsky took legal control of the roughly $300,000 in cash and bonds the couple possessed. In court documents, she listed most of it in Mr. Peters' name.

The guardian housed Florence Peters in a nursing home, but kept Mr. Peters in the guardian's own home. After a while, Ms. Gradsky no longer brought Mr. Peters to visit his wife.

Her sister says Florence Peters was devastated by the loss of contact with her husband. "It would really break her heart. She didn't talk about money. All she wanted was her husband."

Over Ms. Gradsky's objections, Mrs. Peters won back her civil rights in April 1984. Mr. Peters took back legal control of his finances that same month, saying he had recovered his health and had been managing his own affairs despite the guardianship.

Ms. Gradsky's formal control had ended, but the Peterses did not reunite.

Mrs. Peters never left the nursing home. She died of a massive stroke in August 1984.

Lucian Peters did not attend her funeral. Instead, the funeral home received this telegram (see above): *"I'm just passing through the state of Florida and I want my wife to be cremated. Thank you. Mr. Peters."*

Lucian Peters had been in upstate New York with Joan Gradsky. A month later, they were married by a clerk in St. Petersburg. He was 87, she was 54.

About $100,000 of Mr. Peters' money was spent in the first month of the marriage and the 11 months preceding it, court records state.

The expenditures included $26,700 for medical expenses and $15,000 for an addition to Ms. Gradsky's home. A state social worker said Mr. Peters had also purchased new cars for the guardian's two daughters, court records show.

The new Mrs. Peters is a heavy woman with graying hair drawn tightly back. She pauses when asked about the marriage.

"Well," she says, "It's a case of mutual respect, you might say."

She won't discuss her role in managing the Peterses' money, but defends how she treated them.

She says doctor's orders kept Florence Peters in the nursing home. She says the couple's physician also told Peters not to visit his wife because it upset him.

"She was very mean to him. That's why he couldn't go to the nursing home," she says.

The doctor disputes her statements. "That's false," says Dr. Richard Prazak. He never saw Florence Peters mistreat her husband, he says. In fact, he says, they should have been reunited, and recalls urging the guardian to do so.

"I thought it would be good for (Florence Peters)," Prazak says. "The guardian only hindered that rather than helped it."

During four visits to Lucian Peters' home, a reporter was not allowed to see him. Each time, his wife or father-in-law said that Peters wasn't home. His wife and the couple's attorney said he doesn't want to talk.

'We had arguments, that's all'

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

The fight started when the mentally ill man refused to go to bed, police said.

There were screams and a struggle. Blood poured from gashes raked through the man's face and neck by a broken drinking glass. An ambulance took him away. Police arrested his wife.

It was Donald and Joan's worst battle, but hardly the first sign of trouble.

Joan was not only Donald's wife, but also his guardian, appointed by a judge in 1981 to protect and care for him. (Their real names are not used here to protect the couple's privacy.)

It wasn't until Donald almost died and Joan was arrested in the 1984 incident that a judge replaced her as guardian. The problems started long before that.

"There were many, many times that I felt like my own home — where it was supposed to be peaceful and quiet — was nothing but an emergency room," Joan says now.

A 62-year-old retired accountant, Donald was diagnosed as schizophrenic and declared incompetent in May 1981.

Joan, 50, was named his guardian. From then on, nobody challenged her fitness for the job, despite repeated signs of trouble:

■ **Nov. 10, 1981:** Donald told police that Joan was trying to kill him. He was taken to the hospital, then back home.

■ **May 29, 1983:** Police arrived after a neighbor said Joan beat Donald with a mop and severely cut his arm. They were both hospitalized.

Medical records state that Joan did "not wish to live with her husband any longer, and she was afraid she might use homicide on him."

■ **Aug. 25, 1984:** Responding to a call for help, police watched as Donald, covered with blood, ran naked from the house. Rescue workers took him to the hospital.

Donald told police his wife "got irate" when he refused to go to bed. Joan said self-defense led her to gash her husband's face and neck with a broken glass. Police decided Joan was "trying to kill the victim" and arrested her for aggravated battery.

Police knew Joan was Donald's guardian. But they didn't notify court officials of the violence.

"We don't handle these cases that often and sometimes it's a point of who do you turn to," says Indian Shores Police Chief Gary Hess. "Nobody seems to want to take responsibility for it."

The couple's psychiatrist, Indian Rocks Beach osteopath J. B. Joye, was the doctor who each year reported to court officials on Donald's condition. His reports and other documents examined by the *St. Petersburg Times* show no sign he notified officials of problems with Joan.

But government documents suggest that Joye knew there was trouble. Joan was his patient, too. He had about 180 psychiatric appointments with her from 1981 through 1983. She was diagnosed as an alcohol abuser with a history of severe emotional disturbance and personality disorder. Case notes by a state social worker state: "Apparently Dr. Joye has for a long time had concerns about the guardianship as (Joan) has in the past taken him out AMA (against medical advice) and has not followed through with treatment plans."

Joye said he was unable to comment for this article, citing patient confidentiality. However, in a letter to the *Times* he said, "My actions and recommendations in this case were within normal, accepted community standards."

It took a tip to a state hotline the day after Joan's arrest before court officials raised questions about Joan's conduct. After learning of Joan's arrest, Pinellas Circuit Judge Thomas E. Penick Jr. replaced her with a professional guardian overseeing Donald's personal care.

Penick says court officials rarely check on a ward's care, especially if the guardian is a relative. The people who knew there was a problem should have told court officials, he says.

"There's the tragedy, that this will be going on and it's never called to a judge's attention," he says.

Donald's new personal guardian, George Atkinson, kept the couple apart until tensions eased. He took Donald to a new psychiatrist. Donald improved and soon needed no guardian.

Today, Donald and Joan are happy to be free of guardianship. Donald dropped the charge against his wife and they reunited. They dispute most official reports of the struggles between them.

"We had arguments, that's all, just like all married couples do. She made a good guardian," Donald says. His wife adds: "I certainly did the best job that anyone could."

If Joan had remained as her husband's guardian, Atkinson says, the ending could have been tragic. "It could have dragged them under."

'You can't always meet the responsibility'

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Before all the years of hard drinking, mental illness and institutions, Henry McIver was a dashing bartender on the New York Central Railroad, particular about his pleasures.

"My brother Henry, he was a handsome boy," says Rosalie McIver Robinson, his sister in Philadelphia. "Unfortunately, his downfall was fast women and slow horses."

Today he is 73. In slurred speech, he claims to own a Rolls Royce. Sometimes he forgets his cigarette is lit and sets his home afire.

On July 24, 1984, McIver was declared incompetent. His first guardian lasted just six months, ousted from guardianships under suspicion of financial mismanagement.

Then came Lutheran Ministries of Florida, a nonprofit agency that provides guardians for poor and troublesome wards. Lutheran Ministries took over in February 1985.

There was trouble from the start. McIver was unruly and careless, but didn't have the money for costly professional supervision. Lutheran Ministries couldn't find a good boarding home for him. The agency let McIver live with a sister in St. Petersburg.

On March 3, 1985, McIver tossed smoldering cigarette ashes into a wastepaper basket in his bedroom. Fire burned through the ceiling and smoke filled the house he shared with his sister.

After the fire, McIver went to the hospital for problems unrelated to the fire. When he was discharged, Lutheran Ministries let his sister take him back to the charred house. Dale Hyland, the agency's guardianship coordinator, says he didn't know then about the fire.

"My feeling at that time was, 'At least he's got a roof over his head,' " Hyland says.

In fact, firefighters had to punch a hole in McIver's roof to douse the March fire. When a social worker summoned Hyland to the house almost two months after the blaze, Hyland asked a judge to have police officers remove McIver.

Court documents described McIver's condition then: "Hyperactive and delusional, no medication in the home, poor supervision, house is gutted from fire, no electricity, phone or running water, completely unsanitary living conditions with no edible food available."

McIver's sister was living in a car in front of the home at the time, says a friend, Rev. Albert Sanders Sr.

Hyland acknowledges that Lutheran Ministries should have found out sooner about those conditions.

"Of course the guardian has that responsibility. But at the same time, you can't always meet the responsibility," he says. "We're not perfect, okay?"

Even if he had known, Hyland says, it might have been hard to move McIver any sooner. McIver insisted on living with his sister, and Hyland says it's hard to convince a judge to forcibly move a ward.

"The fact that he's living in a burned-out house, that doesn't mean he's being dangerous to himself or others," Hyland says.

McIver's guardian recently moved him into a Pinellas psychaitric hospital. McIver has new corduroy slacks, gets medication and regular meals. He speaks well of his guardian.

"You treated me swell," he told Hyland recently. "I like you."

. . . and a case where the system works very well

'Rosie': Help with no loss of dignity

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Rosie jingles her house keys, anxious to get to the store. A younger companion sits with her in the kitchen, studying Rosie's shopping list.

"You know, you don't have any *food* on this list today," says DeeAnn Foster, Rosie's guardian.

"You know I'm not a big eater," Rosie says.

"You've got oatmeal cookies twice."

Rosie looks up, startled. "Oh, I do?" She looks away, embarrassed.

At 76, Rosie is growing more forgetful. She wants to look after herself. Often she succeeds.

When she needs help, though, Rosie's guardian is there. Foster's work is the ideal of what guardianship should be — a gentle intrusion that protects Rosie without stifling her dignity.

"I had to have some help," says Rosie. "There must be a lot of other people who are helpless and are looking for help and don't get it. I just count my blessings every day."

People like Rosie live all over Florida.

Rosie and her husband George — whose real names will not be published here at the guardian's request — moved here from Chicago. They hoped for a pleasant retirement.

But emphysema disabled George, and Rosie promised to keep him out of a nursing home. For four years, she paid bills, cooked meals, helped him bathe. Often he would fall from bed at night and Rosie would call the paramedics to come lift him.

Then on Dec. 30, 1984, George died. Within five weeks, Rosie was declared incompetent and assigned a guardian.

"If you were confined 24 hours a day to someone who was a complete invalid, naturally it took its toll," a friend from church recalls.

After her husband's death, Rosie ate mostly ice cream and cookies. She didn't bathe often enough, wrote checks on an expired account, didn't pay bills and was swindled by an insurance salesman.

The guardian went right to work. Foster keeps close tabs on Rosie's spending and has volunteers cook balanced meals. She takes Rosie to the dentist and has a nurse stop by to make sure Rosie takes her medication. Foster is paid about $30 a week from Rosie's modest savings.

There are still some problems. Rosie neglects to take her medicine, calls expensive repairmen for simple jobs and trusts strangers too much. She has dizzy spells and her guardian worries that she might fall.

"We don't want her to fall and have a broken hip," Foster says. "I can put her in a cotton-batted room and make dang sure she doesn't break a hip, but I would be remiss as a guardian. It's a narrow line . . . The guardian who would just shuffle them all off in a nursing home would not be a true guardian."

By looking after the basics, Foster has allowed Rosie to remain in her mobile home near old friends. Rosie attends church functions and takes brisk strolls. And she tends to her favorite plant — a hibiscus bush that almost froze to death the winter her husband died.

"It stopped growing," she says. "I didn't see any life in it, any hope.

"I was going to toss the bush, and I looked down and saw a little bit of green. I babied it and babied it and babied it.

"I brought it back to health. It's come back and here it is, a hundred buds on it."

ST. PETERSBURG TIMES ■ WEDNESDAY, DECEMBER 17, 1986

WARDS OF THE COURT

'Pockets of collaborators' compromise welfare of Pinellas wards

■ *Fourth in a series*

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Meet some people entrusted with the welfare of wards of the court:

Fred C. Schrecengost was a guardian who made extra money by housing his wards in the boarding home he managed, according to his former boss.

George Chambers became guardian for an 81-year-old widow after about $9,200 of her modest savings disappeared. Assistant State Attorney James A. Ferguson says Chambers took the money.

Dr. Byron W. Goldberg told officials an 89-year-old veteran didn't need a guardian's protection. Then the psychiatrist helped a friend of his take control of the veteran's $500,000, officials say.

Judges in Pinellas County remove people's civil rights, make them wards of the court and promise them protection.

When family members aren't able or qualified to serve as guardians, judges often entrust wards' care to clubby networks of social workers, professional guardians, lawyers and others.

Some of these networks represent not only the wards' interests, but also selfish interests.

"You have these little pockets of collaborators . . . where they're doing their own thing," says Dale Hyland, guardianship coordinator at Lutheran Ministries of Florida, a nonprofit social services agency. "That's not the way it should be."

Judges often don't screen guardians, lawyers and other court-appointed professionals for skill and honesty. So they wind up trusting those same professionals to police one another.

Some professionals don't need much oversight, says Pinellas Circuit Judge Jerry Parker. "There are just those who are shining examples of what should be done."

Others aren't such good examples. Trusted to protect feeble people, they have used their power to benefit themselves or friends. Trusted to report problems, they have sometimes hidden or ignored them.

Prominent guardianship professionals say they try to ferret out wrongdoers in their ranks. Donna Hicks, outgoing president of Pinellas County's Guardian Association, says: "We police our own."

But some of the professionals have begun relying on one another for work. As wards' needs become secondary to their own, they stop policing one another.

The watchdogs of the guardianship system — the judges — say they count on guardianship professionals to act ethically and to alert court officials to questionable actions by other professionals. Judges trust the professionals to put the interests of helpless wards ahead of their own.

"You're very disappointed when they don't live up to that trust," says Pinellas Circuit Judge Thomas E. Penick Jr. "How do I get the truth? . . . I've got to have the red flags."

Today's articles tell the stories of some guardianship professionals who won trusted positions in the guardianship system, then used that power to benefit themselves or their acquaintances.

— St. Petersburg Times Deputy Metropolitan Editor Robert Hooker contributed to this report.

Cozy ties, selfish motives jeopardize Pinellas wards

Man who took widow's $9,200 named guardian

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

The old snapshots show a woman with red cheeks who loved to dance and visit friends. Then Carolyn Huber's mind and body withered. A man named George Chambers befriended her.

Last year about $9,200 of Mrs. Huber's modest savings disappeared. Authorities say now that Chambers took the money.

Then Chambers got even more power over the 81-year-old widow from Clearwater. He became her guardian.

The judge who appointed Chambers as the woman's guardian last year says he doesn't remember the case. But the judge apparently had no reason to question Chambers, an experienced professional guardian who had the support of a prominent guardianship lawyer.

This is what the judge apparently didn't know: In the 16 months before Chambers became her guardian, Mrs. Huber had become increasingly dependent on Chambers. As her health failed, she gave him control of her finances through a power-of-attorney document and joint checking account. She cut a relative out of her will, substituting Chambers as a prime beneficiary.

When Chambers asked to be named as Mrs. Huber's guardian, his court petition did not disclose his relationship with Mrs. Huber. On May 7, 1985, Pinellas Circuit Judge Robert F. Michael declared Mrs. Huber incompetent and gave Chambers control of her care and money.

Like many other Pinellas judges, Michael says he doesn't check the backgrounds of prospective guardians. He trusts guardianship lawyers to do that.

The St. Petersburg lawyer who helped Chambers establish this and many other guardianships says she did not question Chambers' motives. "At that time we had not uncovered any serious wrongdoing," says lawyer Lauren Sill.

Sill says she didn't know that Chambers was in Mrs. Huber's will. Sill did know that Chambers had control of Mrs. Huber's finances, she says, but she did not investigate how he used that power.

Mrs. Huber's guardianship lasted only five weeks before she died of cancer on June 15, 1985. She left an estate worth about $10,000, court records state.

Earlier in 1985, she had about $30,000, says Assistant State Attorney James A. Ferguson. But in the four months before Chambers became guardian, Ferguson says, Chambers took about $9,200 of Mrs. Huber's money from their joint account. It is unclear how Chambers used the money, Ferguson says.

Mrs. Huber's nephew is dismayed that court officials didn't know more about the man they put in charge of the widow's life.

The nephew, George Ruckelhausen, is especially distressed that Mrs. Huber's family mementos are now missing. "It's a terrible thing when a lifetime is disregarded like that," he says.

Chambers committed suicide last February, as criticism of his work mounted in this case and another one. His widow says Chambers befriended Mrs. Huber and wouldn't have stolen from her.

"My husband was about as honest as the day is long," Adriana Chambers says. "He had no greed."

Mrs. Huber's will left Chambers her personal possessions and $10,000. The estate is in probate court.

Before his death, Chambers declined to accept his $10,000 bequest. "I would rather the money go to family members," he wrote in a letter to the court.

'The main reason he became a guardian was to get money'

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Fred C. Schrecengost was a boarding home manager.

Fred C. Schrecengost also decided to become a guardian.

Why? So he could collect a commission each time he placed one of his wards in the St. Petersburg boarding home he managed, says his former employer.

"The main reason he became a guardian was to get money," says Tom Wick, who owned the boarding home where Schrecengost worked. "That was part of his job, working for me and filling the facilities up."

Each time Schrecengost placed a ward in Wick's boarding home during 1984, Wick says, he paid Schrecengost 20 percent of the first month's rent. Schrecengost also collected 5 to 10 percent of the facility's gross income each month, Wick says.

Guardians have the power to decide where their wards live. They are forbidden to use that power to benefit themselves, says Pinellas Circuit Judge Thomas E. Penick Jr. But Penick says Schrecengost apparently did just that.

"That . . . appears to me to be self-dealing and a conflict of interest," Penick said when a *St. Petersburg Times* reporter told him of Schrecengost's reported arrangement.

"He's doing nothing but funneling people into boarding homes," says Penick. "Instead of looking into what is best for the ward you've got blinders on when you've got an obligation to fill boarding homes with people."

Lauren Sill is the St. Petersburg lawyer who helped Schrecengost become a guardian, and was then hired to handle his legal work. Sill says she didn't know that Schrecengost got commissions for wards placed at Wick's home. But she did know he managed the facilty where his wards lived.

She says she disapproved of the arrangement, but did not forbid or report it to judges. "The other side of the coin is the ward benefits from having the guardian there on call eight hours a day," she says.

Sill had a duty to tell a judge what she knew, Penick says. "She knew *that?*" he says. "I'd never allow it."

Although Penick did not know about the boarding home arrangement, he ousted Schrecengost from all guardianships in early 1985. Penick asked the Pinellas-Pasco State Attorney's Office to investigate the guardian for misappropriating money from estates.

Schrecengost is said to be living in Maryland. He did not respond to a letter and phone calls seeking comment for this article.

VA doctor wrongly steered patient to adviser

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

His first job paid just 19 cents an hour. By age 89, Max had saved more than $500,000 — money he wanted to use to create a scholarship fund after his death.

But last spring, officials say, those plans suddenly changed — in a way that raised questions about the role of a court-appointed psychiatrist.

While Max was a patient at the Veterans Administration (VA) Hospital at Bay Pines, VA officials asked a judge to appoint a guardian to protect him.

Dr. Byron W. Goldberg, a VA psychiatrist who regularly examines prospective wards, was appointed to see if Max was mentally competent.

Goldberg reported in late 1985 that Max suffered from "mild senility" as well as impaired sight and hearing. But Goldberg concluded that Max still had the mental clarity to manage his own affairs. Another doctor agreed, and the judge decided against guardianship.

But then Goldberg decided Max needed *some* help in managing his $500,000 life savings. He introduced Max to one of his friends, Richard Emerson.

Last spring, Max gave Emerson legal authority to manage his finances and agreed to pay Emerson as much as $8,000 a year for the help.

St. Petersburg lawyer William Zewadski prepared the legal documents giving Emerson control. Emerson was a qualified financial adviser at Bay Pines who had done "charity work," Zewadski says.

VA officials dispute that. They say Emerson did not work as a Bay Pines volunteer, was not qualified to handle Max's money and should not have been called into Max's case by Goldberg.

VA officials discovered that Emerson was trying to withdraw money from Max's bank accounts, ostensibly to reinvest it at higher interest rates. Alarmed, the VA asked a judge to reconsider the case.

"Money was flying too fast and hard," says Ed Culbertson, a St. Petersburg lawyer representing the VA.

Max was declared incompetent in July and assigned guardians. Emerson's financial arrangements were reversed before they cost Max any money, VA officials say.

Goldberg's boss says that the psychiatrist violated VA regulations by getting involved in Max's finances and introducing him to Emerson. The chief of staff at Bay Pines says, however, that he found no evidence that Goldberg exploited Max.

"It was well-intentioned but stupid," says Dr. O. Michael Lilien. "It was a dumb thing for him to do."

Lilien says he scolded Goldberg, but took no further action. Goldberg earns about $75,000 a year in his VA job.

Goldberg says he did nothing wrong. "I felt that I acted in the best interests of the patient," he says. In fact, he says he has steered more than one veteran to Emerson.

Goldberg says he met Emerson years ago when Emerson was a salesman for health and nutritional products. Asked to describe Emerson's qualifications as a financial manager, Goldberg said: "I'll have to beg off any further discussion."

Emerson, the financial adviser, has reportedly moved to California. He did not return messages left with his St. Petersburg attorney.

2 men who were arrested became guardians

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Wayne P. Pratt stole a load of lumber, Daniel J. Whaley exposed himself to a male police officer in a waterfront park.

Judges appointed both men as guardians — without knowing about the arrests.

That angers the sister-in-law of one of Pratt's wards. "You got me kind of riled up now," Wilma Siebert said when a *St. Petersburg Times* reporter told her about Pratt's arrest record. "I just don't think the court should have appointed anyone as a guardian if he had a criminal record."

Both Pratt and Whaley were arrested, then entered pre-trial intervention programs for first offenders. As part of the programs, they admitted guilt and the charges against them were dropped.

Because neither was convicted of a felony, they weren't legally disqualified as guardians. But three Pinellas circuit judges who appointed them to cases say the arrests raise serious questions about their fitness as guardians.

One of the judges, Maynard F. Swanson, says he would have rejected the men as guardians had he known of the arrests.

"When you're dealing with a guardianship, the person has to be above suspicion," Swanson says. "The suspicion is there: 'Would he do it again?' "

The arrests are documented in public records, but judges say it's not their job to research guardians' backgrounds. The lawyer who recommended the guardians should have done that and alerted judges to any problems, they say.

That lawyer was Noel Robbins. Robbins knows the guardians well. Whaley lives in Robbins' waterfront home in Treasure Island, and Robbins has asked judges to appoint Whaley and Pratt to many cases. In turn, the guardians hired him to perform the necessary legal work.

Robbins says now that he did not withhold information about the guardians because he is hired by them. He notes that all guardianship attorneys are hired by the guardians.

Robbins says that he didn't know about Pratt's arrest for grand theft in 1979. He says he knew about Whaley's arrest for indecent exposure in 1984, but decided he did not need to tell judges or wards' families about it.

"I felt that it was an isolated instance," Robbins says of Whaley's arrest. "It was in a quiet shoreline-type environment. I guess moonlight over the water or something like that."

After a *Times* reporter asked Robbins about Pratt's arrest on Oct. 23, Robbins asked Pratt to resign his guardianships. In a letter to judges the next day, Pratt said he didn't think he needed to tell Robbins about the grand theft arrest. "I have been a good guardian and sincerely cared for my wards' well-being," he wrote.

Pratt, who was guardian for at least six people, did not respond to a letter and phone message seeking comment for this article. He is no longer an active Pinellas guardian, court records show.

Whaley, who has been guardian for at least 25 people, said in a letter to the *Times* that he trusted Robbins' decision not to tell judges about his arrest. "He knows of my performance, my caring attitude towards my wards and felt that my experience did not evidence a character flaw," he wrote.

Whaley remains an active guardian.

Pinellas system treats many wards well

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Many wards are served well by guardianship in Pinellas County.

When wards are treated well here, it's generally not because the law or judges guarantee it — but because their caretakers genuinely want to do what is best.

"There are bad apples in any profession," says Rebecca Morgan, a St. Petersburg lawyer who specializes in legal problems of the elderly. But for the most part in Pinellas, she says, "the people involved in it really care."

The need for guardianship services is tremendous. There are currently 3,500 active guardianships in Pinellas; more than 1,000 people became wards in 1985 alone.

Wards fare better in Pinellas than in many other parts of Florida, experts agree, partly because of the groups here that train guardians and serve wards who have nobody else.

The Guardian Association of Pinellas County is a private, nonprofit organization that sponsors training sessions and fields complaints about abuses by guardians. Many of its members also serve poor wards for little or no money. Lutheran Ministries of Florida also provides free guardianship services.

Such services have put Pinellas a step ahead of other areas in Florida, says Elaine New, a lawyer on a Florida Bar committee evaluating the state's guardianship system. "That doesn't happen anywhere (else) in the state."

Pinellas is also distinguished by a computer-aided system for checking up on guardians' work.

In addition to maintaining the court files containing guardians' reports and other vital documents, two Pinellas court clerks scan the files for signs of trouble and report problems to judges.

Since 1982, the clerks have been aided by a computer that spits out stern warnings when guardians and lawyers don't file reports on time. The computer was busy in 1986; annual reports were overdue in about one-third of the 3,500 guardianships.

The clerks' oversight is limited by their legal authority and financing, though. Most notably, they don't conduct in-depth audits of how guardians manage their wards' money. Complicated financial reports generally aren't examined for more than 30 minutes.

"With what the law requires, I think we're doing a good job," says Paul Cloninger, supervisor of the probate department for 21 years.

Caring for wards is a money-making proposition for some guardians

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

Some guardians work for free. But many Pinellas County guardians are paid for their work.

A corps of professional guardians has sprung up to care for wards who have nobody else. Almost two-thirds of the Pinellas residents placed under guardianship in the first half of 1985 had nonfamily guardians, a *St. Petersburg Times* analysis shows.

Professional guardians in Pinellas generally charge between $15 and $20 an hour, while lawyers in guardianship cases generally collect $75 to $125 an hour. Guardians and lawyers say they collect an average of $500 to $1,000 a year for each paying ward.

The pay can range much higher. The seven guardians for millionaire banker Hubert Rutland got a judge's permission to pay themselves a total of $193,500 in 1985 and to spend another $139,800 on legal fees.

On the other hand, many Pinellas guardians and lawyers care for indigent wards for little or no pay. "That's part of our duty to the public, to give back some of what we take out," says St. Petersburg lawyer Doug Williamson.

To collect fees, guardians and lawyers are supposed to give judges a petition describing the work performed. Some petitions detail the tasks performed at length. Others give only a brief summary of services.

In most cases, judges approve the requested fee without argument. But not always.

While some judges routinely approve $20 hourly fees for guardians, Pinellas Circuit Judge Jerry Parker drew the line at $15 an hour while he supervised guardianships this year. Parker says that rate is enough for such routine tasks as visiting wards and paying bills.

Guardians who thought they deserved more had to schedule a special hearing, Parker says. "Sometimes they could convince me, sometimes they couldn't."

Unless someone tells them otherwise, judges trust that guardians and lawyers have done the work for which they are requesting fees.

That wasn't the case with guardian Alice Otis. Otis collected $20 an hour for services such as taking wards to the doctor — while paying an employee $8 an hour to actually do the work.

But after Otis requested almost $10,000 in fees on one case, the ward's sister complained. At an August hearing, Pinellas Circuit Judge Maynard F. Swanson told Otis to charge her full rate only for time she herself spent on wards.

Otis says she is resubmitting a request for lower fees, but says she and other guardians thought they could make a profit on their employees' work. Swanson disagreed.

"We need to encourage professional guardians," he said after the hearing. "But I don't really like the idea . . . that the guardianship becomes a profit-making organization."

'If they didn't need us, we wouldn't have much of a life'

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

A bespectacled man is standing by the underwear bin in a K mart store. He is holding a very red pair of Jockey briefs, size 44. He is waving them under the nose of a big-bottomed man named Frank, who is not much impressed.

"Red-colored underwear?" Frank says.

"Darth Vader wears it," the other man replies in a Panhandle drawl. "If it's good enough for Darth Vader, it's good enough for you."

Frowning, Frank works it over in his mind. Then he nods. He takes the red Jockeys.

Frank, 36, is a mentally ill ward who has delusions about outer space, Darth Vader, stink bombs thrown from talking cars and so forth. The man with the drawl is his guardian, Terry Haddock.

Haddock doesn't have to shop with Frank. He could buy the clothes and take them to the boarding home where Frank lives. But Haddock thinks incompetent people should have some choices in their lives.

That's part of why many people think Haddock, 64, is one of Pinellas County's best guardians.

"If there were 10 more Terry Haddocks, you would have nothing (bad) to write about," says Pinellas Park lawyer Patrick Caddell. "He is, in my mind, the ultimate guardian."

"In my opinion, he's one of the best," says Pinellas Circuit Judge Thomas E. Penick Jr. "He's compassionate, sincere, and from all indications I've seen, he follows the letter of the law."

Haddock does the things that other guardians do — pays bills, visits wards, applies for their government benefits and keeps in touch with their relatives.

But then he goes a step further. He'll accept troublesome mental patients as wards when others won't. He yells at nursing home workers who overlook his wards. His work has saved the life of at least one ward.

In return, he makes a good living.

Haddock has 40 wards. Twelve are "freebies," people who can't afford to pay him. The rest he charges $20 an hour. He will earn more than $30,000 in fees this year.

"Absolutely it's a business," he says. "It's a heart-wrenching business. It's also a business that makes you glad that you're a human being."

'Grasping at straws'

He had a sick wife, a large mortgage, a history of heart trouble — and no job. This was seven years ago.

Haddock makes no apologies. He became a professional guardian because he needed a paycheck.

"Now, you take my position: 57 years old, bad medical record. My chances for employment were very, very slim," he says. "I was just grasping at straws."

Like many guardians, Haddock had little training.

All his life he'd been a salesman, or a stockbroker, or a manager. But not an accountant. Never a social worker or a counselor. Yet, there he was, a guardian expected to be a little of each.

"From the time I got the first ward," he says, "I never wanted to do anything else."

His wards have led interesting lives. There's the woman who held a doctorate from Harvard. There was a Czechoslovakian fur designer. A Romanian bellydancer. A prizefighter. A sheriff. There was even a child molester.

Haddock learned the bookkeeping skills. He learned, too, about the problems and the anger of sick, helpless people who have lost their independence.

"You have to be very understanding about the ravages of age," he says. "You have to be able to cope with people who hate your guts, and understand that they really don't. They hate what you represent, and you realize that you would do the same were you in their shoes."

Willie: A success

As a child, Haddock was an orphan in North Florida. His parents died by the time he was 10, and he was sent to live on the farm of his grandfather, a browbeating religious fanatic whom Haddock grew to despise.

"I have always, desperately — I guess from when I was a child — wanted approval," he says. "I wanted that pat on the back."

He gets that feeling from a ward named Willie.

Willie's a freebie, a 44-year-old retarded man with an IQ of 57 who can't read or write. He was declared incompetent in 1976.

Willie hated his first guardian, a disciplinarian who quit in 1981. The guardian's written resignation called Willie "hostile and uncooperative."

"He was a doozy-dilly," Willie says. "He was like a pa-toon sergeant."

Haddock says Willie had always been told what he couldn't do. He couldn't tell time. He couldn't use the phone. He couldn't have a dog. These things have changed.

Willie has two dogs now, a poodle named Fluffy and a German shepherd named Charlie. He lives with them in his own, freshly painted house. He has a phone that Haddock taught him how to use.

Willie holds two part-time janitorial jobs. He does his own grocery shopping. Haddock gives him a weekly allowance and deposits the rest of Willie's checks in a bank.

This system has let Willie acquire a bicycle and a clothes washer, with $2,000 still in savings. When Haddock took over Willie had no money.

Haddock's work probably saved Willie's life.

Three years ago, Willie had a massive heart attack at 3:30 a.m. He made it to the phone, remembered Haddock's instructions, dialed the operator and asked for his guardian.

"Mr. Haddock," he said, "I'm hurting real bad." Haddock, not knowing what was wrong, raced to Willie's house and got him to the hospital in time.

The heart attack left Willie with one more chore

to learn. Haddock color-coded his medicine bottles and taught Willie to take his own pills.

"He's a joy," Haddock says. "He really is."

Holding hands

What bothers Haddock is the wards he can't help.

They're the nursing home patients, the people who don't even remember his name when he leaves.

He'll bring them chocolate, or cookies, or fresh fruit. He'll hold their hands and pat their backs and talk some. "And some of them, all they want you to do is to tell them they're pretty."

Haddock can't be sure of what goes through their minds, except that most seem glad to see him.

"Oh! There's my favorite friend," exclaims Rita, the aging ward from Harvard. She kisses Haddock in the beauty shop of the nursing home. They talk.

"Oh, come back," she begs when he turns to leave. "Come back in an hour."

"It might be longer than that," Haddock says, "but I'll be back."

"I'll wait for you at the front door," Rita says theatrically. "I'll die if you don't come back."

"Don't die," Haddock says. "I don't have a box to put you in."

Haddock doesn't deal well with death. His humor can't stop wards from dying. He's lost 12 of them this year.

Nursing homes are constant reminders. Even after seven years as a guardian, they upset him sometimes.

"I'm going to get one of those cyanide capsules," he says. "And the day they wheel me into one of these places, I'm going to bite down on it."

Being needed

Five years ago, a weak, tiny woman lay in a hospital bed, and this time it wasn't a ward.

It was Jean, Haddock's wife of 38 years. A longtime invalid, she had suffered a stroke.

"I sat by her and held her hand," he says. "She could move one hand, I can't remember which hand it was. And she could move her eyes but she couldn't blink.

"I just remember, she would reach up very softly, and take her hand, and just push my face away. And I'm not smart enough to know what that meant . . .

"I went home and sat down and the phone rang. They told me she had just passed away."

In his grief, Haddock began to imagine his wards could not do without him. He stayed up many nights in the nursing-home room of one of his wards, an old banker who was just as scared as Haddock.

"I really thought that they had to have me," he says. "That saved my life."

In 1984 he remarried, to a friend he had known as a boy. Elizabeth Haddock goes with him now on all his rounds. They sit together in their Clearwater home, talking about their life — their wards.

"Our life doesn't suffer at all because of their needs, not one bit," Haddock says. "In fact, their needs sustain our life. That is the truth. If they didn't need us, we wouldn't have much of a life."

Elizabeth, 63, is a retired teacher of the retarded. "As you grow older," she says, "you have to be needed, in some respect, in some way."

Terry had always been needed by Jean, his invalid wife. Elizabeth had nursed her elderly mother and aunt. Then they all died.

"And then," Terry says, "you're out there just [illegible]."

"And so, these aren't just wards to us, really they're not," Elizabeth says. "They're just a continuation of . . ."

"Little children," Terry Haddock says quickly. "And little children can be very frustrating. And they can be very lovable."

St. Petersburg, Florida December 21, 1986

WARDS OF THE COURT

Fixing Florida's guardian system

Experts unsure public willing to pay the price

■ *Last in a series*

By JEFFREY GOOD and LARRY KING
St. Petersburg Times Staff Writers

The guardianship system needs to do a better job of protecting helpless Floridians, experts say. But they're not sure the public will pay the price of reform.

"I can dream and I can show you what would be the super-good system," says Pinellas Circuit Judge Thomas E. Penick Jr. "There's no way to pay for it."

Would changes really cost so much?

For about $300,000, the state of Florida could provide guardians for 1,500 helpless poor people. That's the same amount state legislators allotted this year to subsidize a beauty pageant.

For about $150,000, Pinellas County could create an office to investigate the work of court-appointed guardians. That's about half of this year's county allotment for fishing reefs.

For about $16,000, wards of the court in Pinellas could have vastly improved medical tests. That's less than rock 'n' roller Chuck Berry was paid to sing at last month's St. Petersburg stadium ground breaking.

Other improvements would cost little or nothing, says Dale Hyland, guardianship coordinator at Lutheran Ministries of Florida.

"The system could be dramatically improved with very little change being made," Hyland says. "But unfortunately there are people who perceive their mission to be preserving the (current) system."

Last week the *St. Petersburg Times* published the results of a yearlong investigation into guardianship — a system that removes the civil rights of helpless people and entrusts their care to court-appointed guardians **(See story, at right)**.

The *Times* found many problems with the system. It deems people incompetent with medical tests that are skimpy and sometimes wrong. It takes people's civil rights without giving them lawyers. It uses guardians whose skills or character hasn't been checked. And it doesn't catch guardians or other professionals who neglect or abuse helpless people.

On both local and state levels, reforms are being considered that could improve the treatment of wards of the court.

A Pinellas County committee assembled by judges has begun studying substantial changes in local procedures. Made up mostly of judges and lawyers, the committee may send its recommendations to Chief Circuit Judge David Patterson, who could implement reforms in an administrative order.

In addition, a committee of the Florida Bar has just finished drafting a sweeping revision of the state guardianship laws. If the Bar approves the proposal, it would be submitted to state lawmakers.

PATRICK CADDELL

"The whole guardianship system over the state is ailing because the law is obsolete," says Clearwater lawyer Leo Plotkin, chairman of the state bar committee.

"Guardianship is the Congo of the legal system, one of the last uncharted areas," says Patrick Caddell, a Pinellas Park guardianship lawyer recently elected to be a judge.

Here are a few changes being discussed:

Legal representation for all. In Pinellas, one person in 10 has a lawyer when declared incompetent. The Florida Bar committee recommends that all proposed wards be given lawyers unless they knowingly waive that right.

In Dade County — where lawyers agree to serve poor people for free — that is already happening at no cost to taxpayers. The Pinellas judicial committee is studying the Dade program and others that provide lawyers to people who risk losing rights through guardianship.

REISCHMANN

"We need a watchdog," says William Reischmann Sr., chairman of the St. Petersburg Bar's probate and guardianship committee. He says he will ask his colleagues to consider requiring lawyers to accept non-paying cases or contribute annually to a legal aid fund. The donation would be $250 — about the price of a no-frills Cuisinart food processor.

Better medical exams: Court-appointed psychiatrists are paid $50 per examination in Pinellas County. A *Times* investigation found that six doctors performed most of the exams because others won't offer their services.

Some say higher fees could result in more thorough exams, more accurate diagnoses and more detailed reports submitted to judges. Most of these fees are taken from the ward's assets.

But even if the fee were doubled — and the county paid for all of it — the added cost would be about $16,000 per year. That's two-thirds of what it cost to hire singer Chuck Berry for last month's downtown stadium ground-breaking festivities.

In addition, the Pinellas judicial committee is contacting the Pinellas County Medical Society to see whether more doctors will volunteer their services for the competency examinations.

"Why should we raise the fee for the doctors at the same time we're asking the lawyers to serve for free?" asks St. Petersburg lawyer Louie N. Adcock Jr.

Thorough court hearings. People shouldn't be denied their civil rights at hearings that often last only a few minutes, exclude the prospective ward and overlook the special needs of each ward, say local and state experts.

"I can't tell you how many times I've been in front of a judge and just shook with fear because this could be done so quickly to an individual," says Irene Rausch, newly elected president of the Guardian Association of Pinellas County.

Under the Florida Bar committee proposal, wards would be present at their hearings unless there is a good reason given to exclude them. Instead of automatically giving guardians control of all aspects of wards' lives, judges would limit their authority to tasks wards can't perform alone.

Judge Penick wants to end the Pinellas practice of completing hearings in less than five minutes. "You can't have a hearing in that amount of time," he says.

Screening guardians. Florida law currently blocks only minors and convicted felons from becoming guardians. "There are some people who are getting into the field who shouldn't be," says Donna Hicks, a professional guardian on the Pinellas judicial committee.

Pinellas reformers want judges to make prospective guardians attend training sessions, outline their skills and undergo background checks that could disclose arrest records and other problems.

Guardianship plans. Court officials don't always know about guardians' plans for managing wards' finances and personal care. State and local reformers want to require guardians to detail plans for a ward's care at the beginning of the guardianship. Guardians could be ousted for not following the plans.

Court officials would regularly review the plans, paying special heed to whether the ward has improved enough to win back at least some rights. "Many people are stuck terminally in a guardianship; they never get out of it," says Plotkin of the Florida Bar.

Detecting abuses. Unless someone complains, judges usually don't know about abuses by guardians. Pinellas Circuit Judge Maynard F. Swanson says the current requirement for guardians to file written annual reports "is pleasant, but it is ineffective."

A "watchdog" could work for the court, randomly checking cases to see whether wards are being exploited or abused, Swanson says.

Lawyer Caddell says a "guardian ad litem" office could investigate troublesome cases. Staffed with a lawyer and other guardianship specialists, the office could operate on a $150,000 annual budget, Caddell estimates. That's about half the amount Pinellas County taxpayers spend each year on fishing reefs.

Guardians for the poor. Many helpless Floridians need guardians but can't afford to pay for them. Volunteer guardians fill some of that need in Pinellas, and the Florida Legislature this year earmarked money to provide public guardians in two judicial circuits.

But there are still thousands of poor Floridians who don't have guardianship services, which cost about $2,000 per person. State legislators approved a $300,000 subsidy to the Miss USA pageant this year — an amount that could have provided guardians for about 1,500 needy people.

Judge confronts Times reporter

St. Petersburg Times Staff Writer

Pinellas Circuit Judge Robert E. Beach angrily confronted a *St. Petersburg Times* reporter last Monday, saying he was treated unfairly in the paper's series on guardianship.

The confrontation came the day after the *Times* described a two-minute hearing in which Beach declared an 82-year-old woman incompetent and assigned her a guardian.

Beach, who also serves as Pinellas County's probate court administrator, confronted reporter Jeffrey Good at the swimming pool at St. Petersburg's North Shore Park.

Beach said: "You did a number on me, Jeff, and I won't forget it. You f—d me, and I won't forget it. I don't forget whores."

Later, the judge complained that stories about him were unfair. According to Good, Beach accused the *Times* reporters of trying to make names for themselves and added, "You made me look like an a—hole."

Good said he urged the judge to contact *Times* editors about his complaints.

Beach canceled hearings scheduled for Monday. He did not return repeated phone messages left by an editor and two reporters last week.

Steps in setting up a guardianship

St. Petersburg Times Staff Writer

Guardianships are set up quickly and can totally change the way an incompetent person lives. Once appointed, a guardian has supreme control over a ward's lifestyle and finances, with little supervision.

Here are the steps required in Pinellas County:

The petition. A petition is filed in probate court. It contends a person is incompetent. A relative or any three Florida citizens can file it. Family members are notified of the proceedings. A hearing date is set.

The layman exam. A citizen — known as a layman examiner — takes the petition to the would-be ward. This layman asks whether the person wants a lawyer and sometimes observes his living conditions and functional skills. A lawyer is appointed if the person wants but can't afford one. The layman's report goes to the court.

Psychiatric exams. Two psychiatrists visit at separate times. They diagnose the person's mental state and recommend whether he be found incompetent. Their reports go to the court.

Adjudication. A judge reviews the reports and finds the person competent or incompetent. The petitioners' lawyer always attends this public hearing. It is usually less than two weeks after the petition is filed. The would-be ward rarely attends or has a lawyer present. There is seldom any testimony. Most are declared incompetent.

The appointment. The petitioners' lawyer nominates a guardian for the ward's personal care and a guardian for his finances. Usually it's the same person. Barring objection, the judge normally approves.

Early guardianship. The judge sets a bond to protect the ward's money, based on an estimate of the ward's assets. Within 60 days, the financial guardian files an inventory of the ward's holdings, and the bond may be adjusted.

Supervision. The guardian is in control and most actions require no court approval. There are no specific standards for the ward's personal care. However, a judge must approve such things as property sales, extensive home repairs, the filing of lawsuits, the borrowing of money. Each year the court requires the guardian to provide a written summary of the ward's care, a doctor's letter reaffirming the ward's condition and an accounting of the ward's finances.

Restoration. Any relative or friend may petition to have a ward's rights restored. The petition must be accompanied by at least one doctor's report saying the ward is now competent. At a hearing, a judge decides whether the ward's competence should be restored. If so, the person's rights are immediately reinstated. It rarely happens.

Some alternatives . . . and where to call for help

St. Petersburg Times Staff Writer

Guardianship is not the only option for people left vulnerable by mental or physical ills.

Less drastic measures can solve problems while preserving a person's civil rights and dignity. Some, however, present risks of their own.

Voluntary guardianship. A mentally alert person with physical problems can get a guardian to manage only his assets. The ward retains his rights and may cancel the guardianship anytime. To qualify, the ward needs a doctor's statement that he is mentally competent. Voluntary guardians must file annual financial reports with the court.

Power of attorney. This is a written agreement to have someone else pay a person's bills, sign documents and so forth. It is limited to mentally competent people, but there is no court supervision. It is nullified when a person becomes mentally confused or comatose. Many experts discourage powers of attorney because they are often used to exploit people.

Durable family power of attorney. This power of attorney is restricted to family members and endures even after a person becomes confused or comatose. It ends, however, if a person is declared legally incompetent. Experts prefer it to an ordinary power of attorney, but say it can be abused, too. Both powers of attorney terminate when a person dies.

Living trust. A mentally competent person can transfer property to a trust, usually managed by a financial institution. If the person who set up the trust becomes incompetent, the trustee would continue to manage the finances.

Representative payee. A Social Security recipient can name someone to receive and deposit the monthly check. Or, if the person is mentally confused, Social Security workers can decide whether the recipient needs a representative payee. The payee is supposed to spend the money only on the original recipient, though only limited documentation is required.

Community services. Community services such as cleaning, laundry, meal preparation, grocery shopping, medical transportation, adult day care and home nursing are available through the Community Care for the Elderly program. Only physically or mentally impaired people over 60 years of age are eligible. There is a lengthy waiting list and priority is given on the basis of need. For people under 60, homemaking services are available through Community Care for the Disabled. This program also has a waiting list and clients are mostly indigent.

Here are agencies that can help:

■ **Probate division, clerk of court's office** — In each county, this office helps the court keep watch over guardianship cases. In Pinellas, telephone 825-1791 (St. Petersburg) or 462-3321 (Clearwater). In Pasco, 847-8186 (Port Richey) and 904-521-4506 (Dade City); Hernando, 904-796-3539; Citrus, 904-726-8500; Manatee, 749-1800; Hillsborough, 223-7811, extension 807.

■ **Florida Department of Health and Rehabilitative Services** — Its district offices of aging and adult services will answer questions, help find guardians and investigate complaints of guardianship abuse. The Largo office (536-5911) serves Pinellas and Pasco, the Tampa office (272-3400) serves Hillsborough and Manatee, the Brooksville office (904-796-5193) serves Hernando and the Inverness office (904-726-1361) serves Citrus.

■ **Lutheran Ministries of Florida** — A charitable nonprofit corporation, it answers questions and takes care of 120 low-income wards in Pinellas, west Pasco and Hillsborough counties. 894-1299 in St. Petersburg, 847-6338 in west Pasco and 831-4449 in Tampa.

■ **Guardian Association of Pinellas County** — This group of professional guardians provides training for new guardians, works to improve standards and investigates complaints in Pinellas. The contact persons include Peggy Parker in south Pinellas (391-1216) and Irene Rausch in north Pinellas (784-4200). To file a complaint, call the association's hotline, 531-4664.

■ **Family Service Centers of Pinellas County** — Its aging services program provides counseling to any resident of Pinellas who is 60 or older. 822-3961.

■ **Gulfcoast Legal Services** — This agency provides legal help to qualified persons in south Pinellas (821-0726), north Pinellas (443-0657) and Bradenton (746-6151). **Bay Area Legal Services** offers the same help in Tampa (223-2525) and New Port Richey (847-5494).

■ **The Florida Bar** — It will help you find a lawyer and will investigate complaints against lawyers. For help in finding a lawyer, call 821-5450 in St. Petersburg, 461-4880 in Clearwater, 847-8107 in west Pasco, 748-8859 in Bradenton, 229-8349 in Tampa and 800-342-8011 elsewhere in the state.

To file a complaint against a lawyer (except fee complaints) in Pinellas, Pasco, Hillsborough and Manatee, call the Bar office in Tampa (875-9821). To file complaints in Hernando and Citrus, call the Bar in Orlando (305-425-5424).